Central Law Journal.

ST. LOUIS, MO., JUNE 19, 1903.

COMPARATIVE STUDY OF INTERSTATE AND INTERNATIONAL LEGISLATION.

The receipt of a recent pamphlet, entitled "Review of Legislation, 1902," published by the New York State Library has offered opportunity to call attention to the highly valuable and efficient service which is being rendered by this library under the efficient directorship of Hon. Melvil Dewey, in collecting, reviewing, and indexing the new laws passed by any of the states. These publications appear three times a year under three different headings, (1) Summary and Index of Legislation; (2) Digest of Governor's Messages, and (3) Review of Legislation. These three closely related annuals make up a year-book of comparative legislation, useful to legislators, public officers, journalists, and all interested in keeping track of the movements of legislation in general, or on any special subject. The small charge exacted for these publications has resulted in their wide dissemination throughout the country, and in awakening a deeper interest in the study of comparative legislation, not only as between the states, but between nations as well.

This awakening to the importance of a new subject of inquiry resulted in a project, for the organization and indexing of material for the comparative study of foreign legislation, being offered for acceptance to the trustees of the new Carnegie Institution. The American Bar Association, with its usual promptness in encouraging any movement that is in any way calculated to interest lawyers or raise to higher eminence the profession of the law, supported this particular movement with the following resolutions:

Whereas, at present the comparative study of the legislation of the various countries of the world is for most purposes impracticable;

Whereas, the work of the state library department of the University of the State of New York in comparative state legislation points the way to an organization of the enactments of all countries and suggests an efficient agency for performing this task;

Resolved, That the American Bar Association earnestly urges upon the trustees of the Carnegie Institution the importance of providing, in cooperation with the New York State Library, a comprehensive organization of the material required for the comparative study of world legislation.

Resolved, That a committee of three be appointed to present this matter to the trustees of the Carnegie Institution.

The librarian of congress, to whom, as chairman of the advisory committee on bibliography of the Carnegie Institution, the application was referred, became so much interested that he applied to congress for an appropriation to have the work carried on at the national library. While this application was unsuccessful at the recent session, it is hoped that congress will later grant the needed funds or that the Carnegie Institution may take up the project thus proposed.

We trust that the bar of the country will drop any tendency toward a provincialism that would lead it to show any lack of interest in a movement like this that cannot but result in its own elevation, and give evidence of that *esprit de corps* that has always been sufficient heretofore, to unite the members of the bar in support of any movement within the field of their profession which is calculated to raise its own standard, or benefit the community at large.

RIGHT TO ENJOIN STRIKES BECAUSE OF INTERFERENCE WITH INTERSTATE COMMERCE.

A recent number of the *Harvard Law Review* takes occasion to comment unfavorably on the position taken by the CENTRAL LAW JOURNAL as to the right of a court of equity to enjoin a strike on the ground of interference with interstate commerce, a position which we assumed in a recent annotation of the case of Wabash R. R. v. Hannahan, 56 Cent. L. J. 201, 314. Speaking of the preliminary injunction against the calling of a strike on the Wabash Railroad rendered in this case, the *Harvard Law Review* says:

"Such a decision draws a positive distinction between the right of an ordinary laborer and that of a railroad employee to enter upon a peaceful strike. This is hardly justifiable in the present state of the law. It has been universally conceded that every workingman has a right to strike peaceably either alone,

or in combination with others, no matter what injury is done thereby to private individuals. Is this right to be lessened when the public at large is injured? Beneath the urface of this question lies a sharp conflict between the individual's right of personal liberty in action and the community's right to continuous adequate service. Despite the undoubted importance of the latter, it must surely be more in consonance with the genius of our institutions that the former should prevail. Though there are several cases which assert that one who offers his services to a railroad impliedly gives up his right to quit when he pleases, it must be remembered that this language was not necessary for the decisions, and was used during the riots of 1894 when less emphatic words would have spelled anarchy. See Toledo, etc., Ry. Co. v. Penn. Co., 54 Fed. Rep. 746; United States v. Elliot, 62 Fed. Rep. 801.

"Assuming, however, that such injunctions are bad by common-law principles, a further question arises whether the situation has been changed by the Sherman Act prohibiting combinations or conspiracies in restraint of trade or interstate commerce. If railroad employees were engaged in interstate commerce, a concerted strike would undoubtedly fall within the terms of the act. But they are not so engaged. They are engaged in supplying labor to their employers, and, in theory at least, they are no more in interstate commerce than are the dealers who supply other commodities necessary for the running of a railroad. While it must be acknowledged that a strike tends almost necessarily to impede interstate commerce, such a result is purely incidental. The duty to the public is owed by the employers alone, not by the employees. See People v. N. Y., etc., R. R., 28 Hun (N. Y.), 543. Thus it would seem that the Sherman Act cannot reasonably be considered to apply to strikes of such a nature. The law being as it is, the dissolution of the injunction in the principal case can be regarded only with satisfaction."

We are surprised by the intimation in the first paragraph of this quotation that the rights of the public at large are in any instance, or to any extent, to be subordinated to the rights of individuals, or any company of individuals. We had always believed that the maxim, *salus populi . prema lex est*, was absolutely established as the fundamental principle of all government, and that such maxim knew no exceptions. "Is the right of a workingman to strike," says the *Harvard Law Review*, "to be lessened when the public at large is injured?" Of course it is, and no one doubts at this day, at least, that "even under the genius of our institutions," any and every private right of the individual citizen must submit to be curtailed and even abolished, if the exercise of such right at any time is resulting, or is likely to result, in injury to the public.

The particular question now confronting us, however, concerns itself with the operation of the Sherman Act on the right of a labor union to call out its members on a strike at a time or in a such a manner that the exercise of such a right would result in interfering with the operation of interstate commerce. In the second paragraph of the quotation of our contemporary the astonishing argument is advanced that if railroad employees were engaged in interstate commerce, a concerted strike would undoubtedly fall within the terms of the Sherman Act, but that since they are not so engaged they do not come within its provisions, and therefore can do nothing to interfere with interstate commerce within the meaning of that act. The argument is erroneous on the face of it. The Sherman Act applies to any combination or conspiracy which is calculated to result in interfering with interstate commerce, whether the parties to such conspiracy are engaged in interstate commerce or not. In Beach on Monopolies and Industrial Trusts, section 110, the learned author remarks: "Construing several clauses of the interstate commerce law with section 5440 of the Revised Statutes, it follows that a combination of persons, *without regard to their occupation*, which will have the effect to defeat the provisions of the interstate commerce law, inhibiting discrimination in the transportation of freight and passengers, and further to restrain the trade and commerce of the country, will be obnoxious to the penalties therein prescribed." And the federal courts have universally sustained this statement of the law by numerous decisions, and have unhesitatingly enjoined all outside interference with interstate commerce. In every one of the class of cases just mentioned the "consiracy" or "combina-

tion" which was enjoined as an interference with interstate commerce within the provisions of the Sherman Act, was a strike or an attempt to strike on the part of some labor union. Waterhouse v. Comer, 55 Fed. Rep. 149; Toledo, etc., R. R. v. Pennsylvania Co., 54 Fed. Rep. 730; United States v. Aglar, 62 Fed. Rep. 824; United States v. Elliott, 62 Fed. Rep. 801; Southern California R. R. v. Rutherford, 62 Fed. Rep. 796; United States v. Amalgamated Council, 54 Fed. Rep. 994; 26 L. R. A. 158. The case of Waterhouse v. Comer, *supra*, was an attempt on the part of the officers of a labor union to call out the employees on certain roads, at peace with their employers, unless the latter refused to handle goods delivered to them by a connecting line, on which a strike had been declared. The court held this to be a "conspiracy" in restraint of interstate commerce within the meaning of the Sherman Act. The language of the court in this case is stronger and more unequivocal than any which has come to our attention. The court said: "It is true that in any conceivable strike upon the transportation lines of this country there will be interference with and restraint of interstate commerce. This will be true also of strikes upon telegraph lines. In the presence of these statutes which we have recited, and in view of the intimate interchanges of commodities between people of several states of the union, it will be practically impossible hereafter for a body of men to combine to hinder and delay the work of the transportation companies without being amenable to the provisions of these statutes."

It is evident that with the recent rejuvenation of the Sherman Act and its extension to include within its terms, "all bodies of men without regard to their occupation," and the increasing readiness of the federal courts to invoke their equitable power of injunction to prevent, rather than their power at law under the statute to punish the commission of any act having a tendency to directly or seriously interfere with interstate commerce, it will hereafter be quite impossible, as the quotation we have just stated informs us, for any man or any combination of men to do anything that will result in interfering with interstate commerce, or with any of its accessories, without meeting the stern rebuke of the federal courts. And this is as it should be. If a sovereign state can be restrained from passing any act, which even remotely effects interstate commerce, why cannot a labor union, which is the mere creature of the state, be enjoined from the commission of an act, which in a most direct and injurious manner interferes with interstate commerce? Indeed, what greater interference with interstate commerce can be conceived of than the action of the officers of a labor union in calling a general sympathetic strike on all the railroads of the country, as was done in Chicago in 1894, thus tieing up commerce and stagnating business throughout the nation. Such action on the part of a labor union or its officers comes within the provision of the Sherman Act and can and should be enjoined. Only sophistry or blind partisan prejudice could reach any other conclusion.

NOTES OF IMPORTANT DECISIONS.

DISCOVERY — RIGHT TO PROPOUND FISHING INTERROGATORIES. — The practice of attorneys in going on fishing excursions in the enemy's preserves in search of evidence has often been condemned. But a recent case calls a halt to the further advance of this criticism by showing the beneficent purpose of the statute which compels either party to a case to disclose so much of his case as is necessary to support the issues raised by his opponent. Volusia County Bank v. Bigelow (Fla.), 33 So. Rep. 704. The assignment of error in this case related to the action of the trial court in sustaining exceptions of defendant in error to a series of eighty interrogatories propounded to her before the trial, for the purpose of discovery. The only objection urged in this case to the entire series of interrogatories was "that the questions propounded are improper and illegal, and not comprehended within the statute." There was, in addition, an objection to certain designated interrogatories that they were "irrelevant, incompetent and immaterial," but the court sustained the objection to the entire series.

In overruling the decision of the trial court, the appellate court said: "The purposes of the interrogatories evidently was to secure evidence from the claimant to disprove the *bona fides* of her alleged ownership of the property claimed by her, and that, we think, was a legitimate object of discovery. In seeking to elicit evidence for that purpose, plaintiff in execution was not seeking exclusively for a disclosure of claimant's case, but for affirmative evidence to disprove the *bona fides* of that claim, or rebut a *prima facie* title asserted by her, by establishing fraud; so that the case was within the rule generally

recognized. Bayley v. Griffiths, 1 H. & C. 429; Blight v. Goodliffe, 18 C. B., (N. S.) 757; Todd v. Bishop, 136 Mass. 386; Wilson v. Webber, 2 Gray, 558. To the extent indicated it was competent for the plaintiff in execution to interrogate the claimant, and the court erred in sustaining claimant's objection to the entire interrogatories. It is neither necessary on this writ of error, nor would it be profitable, to pass upon the propriety of each of the 80 interrogatories submitted. That can be done in the court below in the future progress of the cause, if specific objection is made to any particular interrogatories; and such objections, if any, should be determined in view of the rule that a wide latitude is allowed in the range of examination for the purpose of proving fraud, and in view of the fact that the statute was designed to enable a party, if he can, to secure admission from his adversary, in advance of the trial, for the purpose of relieving himself from the necessity of adducing evidence to prove any particular thus admitted. Attorney-General v. Gaskill, L. R. 20 Ch. Div. 519; Baker v. Carpenter, 127 Mass. 226; Jacksonville, T. & K. W. Ry. Co. v. Peninsular Land, Transp. & Manuf'g Co., 27 Fla. 1, 157, 9 So. Rep. 661, 17 L. R. A. 33, 65."

The general rule on this subject is carefully and accurately stated by a great English textwriter. In Day's Common Law Procedure under the Procedure Acts (4th Ed.), pages 305-309, the decisions under the English act are collated, and the following rules announced: Such interrogatories are not within the section (1) as seek exclusively for the case of the other side; (2) as are of a merely fishing character; (3) as are not reasonably relevant to the issue; (4) as are unnecessary or useless; (5) as seek to establish a forfeiture, strictly so-called; (6) as seek to contradict a written instrument; and (7) as are privileged upon grounds of public interest. But interrogatories may be admissible (1) the answers to which may expose other persons to actions; (2) the answers to which may expose the party interrogated to penalties; (3) where a defendant in ejectment seeks to discover the character in which the plaintiff claims, and the pedigree upon which the plaintiff claims, and the pedigree upon which he relies; (4) that seek secondary evidence of lost written documents; (5) that inquire into confidential communications that the party interrogated would not be privileged from disclosing upon oral examination; (6) that seek to disprove the *bona fides* of a *prima facie* defense, or to show that the defendant has acted fraudulently.

FIXTURES—A MORTGAGEE'S RIGHT TO FIXTURES.—The judgment of Joyce, J., in Lyon v. London City and Midland Bank (Times, 19th inst.) is an interesting reminder that the law with regard to the right of a mortgagee to fixtures, as it has been settled by recent decisions of the court of appeal, is not in accordance with justice, and that when opportunity occurs it ought to be reconsidered. The rule which might well be supposed to be applicable was enunciated by North, J., in Cumberland Union Banking Co. v. Maryport, etc., Co., 40 W. R. 280 (1892), 1 Ch., p 425: "I think it was not in the power of the mortgagors to confer on their mortgagees a better title than they themselves had to the property which they agreed to mortgage to them;" and under ordinary circumstances this rule would of course prevail. But the doctrine that chattels, by being affixed to land, become part of the land, and follow the title to the land, has been allowed to displace the rule, and mortgagees have thus been enabled to take possession of articles which, but for this doctrine, would clearly be the property of third parties. The three recent court of appeal cases of Gough v. Wood & Co., 42 W. R. 469 (1894), 1 Q. B. 713; Hobson v. Gorringe, 45 W. R. 356 (1897), 1 Ch. 182, and Reynolds v. Ashby & Son (1903), 1 K. B. 87, enable the present legal position to be stated with accuracy, although they do not show how that position is, except upon merely technical grounds, to be justified.

The case in favor of the mortgagee is clearest when the articles in question are already affixed to the land. It is true that, having regard to modern conditions under which machinery is supplied, the duty of inquiring as to the mortgagor's title to fixtures, as well as his title to the land, ought to be imposed upon mortgagees. But the law does not trouble to adapt itself to modern conditions. A trite maxim expressed in Latin is enough to set aside all considerations of equity or of business convenience. *Quicquid plantatur solo cedit* is easily remembered and easily said, and no one has yet had the courage quietly to set the well-worn legend aside. The mortgagee finds upon the land valuable property, and although he may well suspect that it does not belong to the mortgagor, but has only been delivered on hire, he is allowed to take it as part of his mortgage security. But when the articles are not affixed at the time of the mortgage there is, of course, in principle and justice, no reason whatever for allowing the mortgagee to profit at the expense of third parties by the fact that they have been subsequently brought upon and affixed to the land, and this is so obvious that in Gough v. Wood & Co., *supra*, the court of appeal defeated the motrgagee's claim by implying an authority on his part to the mortgagor, while the latter remains in possession, to bring on the land, and to allow the true owner to remove, fixtures necessary for his business. This implied authority, said Lindley, L. J., "ought to be regarded as authorizing the mortgagor, whilst in possession, to hire and bring and fix * * * fixtures necessary for his business, and to agree with the owner that he should be at liberty to remove them at the end of the time for which they are hired. Unless this is so, persons dealing *bona fide* with mortgagors in possession will be exposed to very unreasonable risks, and honest business with them be seriously impeded."

This passage, however, is a solitary and very limited concession to the requirements of justice, and its limit was fixed by the case of Reynolds v. Ashby & Son. It would seem that if such an authority is to be implied, and if a third party acts upon it by placing valuable goods upon the land, the mortgagee ought not to be at liberty to cancel it by going into possession. Yet such has been held to be the law. As long as he remains out of possession, then the principle of Gough v. Wood applies, and the owner of the goods is at liberty to remove them, but should he go into possession —or, which is the same thing, should the very circumstances arise which make it important for the owner of the goods to assert his rights—then his chance of doing so is at an end and the goods are allowed to be retained by the mortgagee. Merely to state the law is sufficient to show that it requires to be altered, and it is not surprising that in Lyon v. London City and Midland Bank, Joyce, J., expressed his sympathy with the principle enunciated by North, J., in Cumberland Union Banking Co. v. Maryport, etc., Co. *supra*, viz., that the mortgagor could not give to the mortgagee a better right than he himself had. Similarly in Gough v. Wood & Co., Wright, J., held that "one man's property cannot be taken away from him by being fixed in the land of another" see (1894), 1 Q. B., p. 718. It may perhaps be suggested that the judges of first instance have been trying to dispense justice in spite of the venerable maxim referred to above, but that they have been overruled by the technical views taken in the court of appeal. Under these circumstances a discussion of the matter in the House of Lords would seem to be desirable.

But the foregoing remarks assume that the articles in question have been in fact so affixed to the land as to become fixtures, and, if this is not so, then of course the title of the true owner is not displaced, and the claim of the mortgagee is defeated. This is what happened in the recent case before Joyce, J. The mortgaged premises were a place of public entertainment at Brighton. Prior to the mortgage, the mortgagor had hired a large number of arm-chairs at the rate of £20 a week with an option of purchase within a limited time for £676. Each chair had two standards with holes at the foot for screws, and, in accordance with the requirements of the local authority, they were screwed to the wooden floor. Now, the test to be applied to discover whether any particular article has become affixed to the freehold are, as is well known, not of a very definite character, and frequently they are difficult of application. It is necessary to consider the mode of annexation, and also its object. Slight annexation will be enough if there is clearly an intention to make the chattel permanently a part of the land or building, but, provided the article can be removed without great damage to the freehold, even a very secure mode of annexation will not make it a fixture, if it has been affixed for a temporary purpose or for the more convenient use of the article as a chattel: Holland v. Hodgson (20 W. R. 990. L. R. 7 C. P. 328). In the present instance, however, Joyce, J., naturally found no difficulty in applying the tests. The mode of annexation of the chairs was not such as in itself to make them fixtures, while the object of the annexation was merely temporary. The chairs were never, in the words of Lord Halsbury, C., in Leigh v. Taylor (50 W. R. p. 624; 1902, A. C. 157), intended to "form part of the structure" of the building. Hence Joyce, J., decided against the claim of the defendant bank, the mortgagees.—*Solicitors' Journal.*

INJURIES FROM ELECTRICITY IN HIGHWAYS.

No branch of the law better illustrates its flexibility than that which deals with rights and liabilities in the use of electricity. Although the employment of this vast force in practically every line of commerce is of recent date, and its properties are but imperfectly understood by scientists themselves, the courts have frequently grappled with the questions arising out of its utilization, and a body of law, novel and interesting, has rapidly developed within the past fifteen years. The courts have applied settled principles to new cases, so far as possible, and when no perfect analogy in the law has been available, they have not hesitated to do as an eminent member of a Kentucky court suggests in the following unique although mixed metaphor: "We must find some signboard along this new road, and if we cannot so find the way to a proper conclusion, we will be forced to swing a sickle into the field of reason and there harvest a principle which can be crystallized into a just rule to apply to cases like this one."[1]

The difficulties surrounding the subject arise from the fact that the nature of this force is but partially comprehended; the impossibility in many instances of discovering its presence; the suddenness with which an apparently safe position may instantly be changed into a death trap, by the breaking of a wire, the destruction of the insulating material, or the induction of a current from some unexpected source. Because of the utter impossibility of anticipating every freak which this subtle fluid may perform, the courts have generally held that companies employing electricity upon the public streets

[1] Thomas, Admr. v. Maysville Gas Co., 53 L. R. A. 147 (Ky.), 21 Ky. Law Rep. 1690.

are not insurers against all accidents therefrom.[2] It becomes necessary, therefore, to determine in what classes of cases liability may be imposed upon corporations or individuals who utilize electricity upon or along public thoroughfares, in respect to injuries from such use. We lay out of the discussion all cases involving injuries to employees, as well as accidents to persons or property from electric wires upon buildings; injuries (not due to electric shock) resulting from contact with fallen wires; and electralysis of gas and water pipes.

The simplest case which has come before the courts is that in which a corporation maintains a heavily charged uninsulated electrical wire near to a highway, and within easy reach of travelers. Where such exists, there is a *prima facie* case of negligence; and it has been held that where a person is found dead at the foot of the pole on which such wire is suspended, with a fresh burn upon his hand and his body otherwise in a sound condition, there is a sufficient case for the consideration of the jury.[3] This liability, however, does not follow from the mere fact that a live wire is left exposed. If it is so far removed from the line of travel that the owner could not reasonably foresee contact between it and one who uses the highway, there is no responsibility for accidents. Thus, where an uninsulated wire was placed upon an awning in front of a building, the awning being 16 feet above the street and evidently not intended as a place of resort, and the deceased went upon it to assist his father (who had been shocked while attempting to raise the wires so as to allow the passage of a house he was moving along the street), and in doing so the deceased was killed by the electrical current, the owner of the wires was held not answerable for the occurrence.[4]

A further extension of the liability has been made where the owner of the wire abandons it under circumstances which render it possible it will be removed by a third party and placed in a dangerous proximity to the highway. Where a telephone company ran its wires over the poles of an electrical railway company, and afterwards discontinued the use of a certain wire, coiling it and placing it on the bracket attached to a pole of the railway company, and subsequently the latter took down the pole and hung the coil on the telephone company's post, where it was highly charged with electricity from the railway company's wires, causing injury to a traveler, the telephone company was held liable for negligence in failing to anticipate the acts of the railway company. The court say: "This responsibility is based on the principle that if the defendant, instead of removing its wire, chose to hang it upon the electric pole where it had no right to be, it was bound to look after it, and that, if the defendant had done so, it would have discovered the removal of the same, and its condition, so that the injury might have been avoided, and consequently that the company must be taken to have forseen as likely to happen or possibly to follow the consequences which resulted from its omission to remove the wire when it was disconnected from the telephone."[5]

A more complex situation arises where a heavily charged wire is maintained at a safe distance from passers-by, but it breaks and falls, thereby coming in contact with a traveler. Where, under these circumstances, a live electric light wire was lying in an alley, and a fireman inadvertently touched it and was killed, the electric light company was held liable, in not sufficiently protecting from injury persons who were lawfully in the alley.[6] So where the act of negligence charged is the insecure fastening of the wires, there is a liability imposed for injuries from fallen wires; and a failure to inspect the lines will be adequate proof of such negligence.[7]

Generally, the question is whether the electrical company whose wires have fallen has used due diligence in removing them or in rendering them harmless, after it has received

[2] City Elec. Co. v. Conery, 31 L. R. A. 570 (Ark. 1895), 61 Ark. 381, 33 S. W. Rep. 426.

[3] Suburban Elec. Co. v. Nugent, 32 L. R. A. 700 (N. J. 1896), 58 N. J. Law, 658, 34 Atl. Rep. 1069.

[4] Brush Elec. Co. v. Lefevre, 98 Tex. 604, 49 L. R. A. 77 (1900), 55 S. W. Rep. 396.

[5] Aherne v. Oregon Tel. Co., 24 Oreg. 276, 22 L. R. A. 635 (1893), 33 Pac. Rep. 403, 35 Pac. Rep. 549. And see Willey v. Boston Co., 168 Mass. 40, 37 L. R. A. 723 (1897), 46 N. E. Rep. 395.

[6] Gannon v. Laclede Gas Light Co., 145 Mo. 502, 43 L. R. A. 505 (1898), 46 S. W. Rep. 968, 47 S. W. Rep. 907; Denver Consol. Elec. Co. v. Simpson, 31 L. R. A. 566 (Colo. 1895), 21 Cal. 371, 41 Pac. Rep. 499.

[7] Snyder v. Wheeling Elec. Co., 39 L. R. A. 499 (W. Va. 1897), 43 W. Va. 661, 28 S. E. Rep. 733.

or should have received notice of their fall;[8] for it has been remarked that the owner of the fallen wire cannot escape liability by keeping himself in ignorance as to the condition of his lines. "The negligence of the defendant," a South Carolina court declares, "might have consisted in its failure to know the facts connected with the breaking of the wire. In other words, the defendant might have been negligently ignorant. * * * The defendant was bound to exercise due diligence to receive information as to the condition of its wires, and its failure to use proper diligence in this respect would constitute negligence."[9] In all such cases the inquiry respecting undue delay in replacing the wires is for the jury, and even the fact that the owner had not a sufficient force to enable it to repair immediately, is not conclusive against the electrical company, but must be passed upon by the jury in the light of all other circumstances in the case;[10] as, for example, the prevalence of a violent storm, the time of day or night when the wires fell, the number which fell and their distance from each other. If, under all the facts in the case, the company has used the highest degree of care and diligence practicable under the circumstances, and in despite thereof and solely because of some latent and unknown defect not discoverable by reasonable examination, the wire breaks and falls, there is no liability on the part of the owner of the wire.[11]

A more difficult question is raised where there are two wires involved, one (harmless in itself) suspended near another which is charged with a heavy current, the former breaking and falling upon the latter, thus conveying its deadly current to the ground. Where this occurs, the courts have very generally held the owner of the broken wire responsible, if the accident can be traced to his neglect. Thus, where the defendant's agents left the defendant's wire hanging down over an electric light wire, and the plaintiff was injured by contact with the former, its owner was held liable.[12] And a telegraph company was held to answer in damages because it negligently allowed its wires to rot, to the extent that they readily broke and fell upon electric light wires, causing injury to travelers along the highway.[13] In another case, a guy wire, used by an electric light company, and which was entirely harmless, broke and hung in contact with the feed wire of an electric railway company. A traveler along the highway grasped the end of the guy wire, as it hung over the sidewalk, and was killed. The electric light company was held liable for his death.[14] In an action for injuries to the horses of the plaintiff coming in contact with a small and weak telephone wire which had been insecurely suspended near a trolley wire, and which broke and fell to the highway, it was held the telephone company was liable, for it had failed to secure its wire properly, and it was guilty of further negligence in allowing the wire to remain hanging in contact with the trolley wire, and threatening injury to the public.[15]

The two cases last cited announce another and most important doctrine, which is, that not only may the company be liable whose wire has negligently been permitted to fall, but an action lies against the company across whose wire the line of the other has fallen, though the fall was in nowise due to the carelessness of the second company. The ground for this rule is that the owner of the lower wire should not attempt to operate its business with a dangerous wire in contact with its own and hanging in the highway; and furthermore, it should anticipate the possible fall of superior wires, and guard its own lines therefrom by proper appliances.[16] If the fall of the upper wire is due to the carelessness of the owner of the lower, the reason for the liability is evident; the negligent act is the proximate cause of the injury. So where the servants of a street car company allow

[8] Cook v. Wilmington Elec. Co., 9 Houst. (Dela.) 306 (1892), 32 Atl. Rep. 643.

[9] Mitchell v. Charleston Light Co., 31 L. R. A. 577 (S. Car. 1895), 45 S. Car. 146, 22 S. E. Rep. 767.

[10] Boyd v. Portland Elec. Co., 37 Oreg. 567, 52 L. R. A. 509 (1900), 62 Pac. Rep. 378.

[11] Baltimore City Co. v. Nugent, 39 L. R. A. 161 (Md. 1897), 86 Md. 349, 38 Atl. Rep. 779.

[12] Henning v. Western Union Co., 41 Fed. Rep. 864 (1890).

[13] Western Union Tel. Co. v. Thorne, 64 Fed. Rep. 287 (1894).

[14] Haynes v. Raleigh Gas Co., 114 N. Car. 203, 26 L. R. A. 810 (1894), 19 S. E. Rep. 344.

[15] Electrical Co. v. Shelton, 89 Tenn. 423 (1890), 14 S. W. Rep. 863; McKay v. Southern Bell Tel. Co., 31 L. R. A. 589 (Ala. 1896), 111 Ala. 337, 19 So. Rep. 695.

[16] Electrical Co. v. Shelton, 89 Tenn. 423 (1890), 14 S. W. Rep. 863; McKay v. Southern Bell Tel. Co., 31 L. R. A. 589 (Ala. 1896), 111 Ala. 337, 19 So. Rep. 695.

the trolley pole to fly up against an overhanging telephone wire, breaking it and causing it to fall upon the trolley, the railway company is liable if it continue to operate its lines without attempting to remove the fallen wire, which is now threatening danger to the public because of its contact with the trolley.[17]

But the theory under which liability is fixed, in most instances, upon the owner of the lower and heavily charged wire is, that it has assumed to use a highly dangerous agency and it should take due precautions to prevent the injury to travelers, whether the dangerous condition is produced by itself, as in the cases last referred to, by a stranger or by the act of God. Hence, where a violent storm threw down telephone wires (which are usually charged with feeble currents) upon trolley wires of a street railway company, and the latter knew of the condition of its lines in time to remove the danger, but nevertheless continued to run its cars without clearing away the obstructions, it was held liable for the death of a horse which was driven against one of the depending wires.[18] Likewise during a terrific storm, the defendant's electric light wire grounded and lay for about three and one-half hours in this condition. The deceased, seeing the wire, which was not charged with electricity, seized it and attempted to throw it off of the sidewalk; but in so doing snapped it against a live wire and received a fatal electric shock. The defendant company was held to answer for negligence.[19] In another instance, the span wire of the defendant railway company broke and swung around to the point where the plaintiff was standing. Coming in contact with his head, it burned out his eye and delivered a powerful electric shock. The defendant railway was held liable in not suffciently guarding its trolley from the fall of other wires upon it;[20] and a telephone company was held answerable in damages where one of its insulated wires which ran parallel to the curb of a public street and was strung along the poles of an electric street car line, was rubbed by a private wire belonging to a third party until the insulation was worn off, and the private wire came in contact with a traveler and killed him[21] In a well reasoned case, decided by an Arkansas court, the doctrine governing the above cases is stated to be, that every man must use his own property in such a manner as not to interfere with and injure his neighbor. The court drew an analogy between the case at bar, where a telephone wire sagged and broke, thus coming in contact with the defendant company's trolley, and cases in which the owner of a ferocious animal fails to keep it upon his own premises, and to those in which the owner of reservoirs, located upon his land, does not prevent their bursting and discharging their contents on another's property. The court say: "This duty (of the defendant company) is not limited to keeping their own wires out of the streets or other public highways, but extends to the prevention of the escape of the dangerous force in their service through any wires brought in contact with their own, and its transmission thereby to any one using the streets. Only in this way can the public receive that protection due it while exercising its rights in the highway in and over which electric wires are suspended."[22] In one jurisdiction a limitation has been place upon the duty of the owner of heavily charged wires, which is, that unless such owner might reasonably have foreseen the contact between his and other lines, there is no liability.[23]

A distinct class of cases is presented where the breaking of the wires would not, of itself, be accompanied with danger, but because of an act of God (as, a severe thunder storm) the wires become highly charged with electricity and inflict damage to persons on the highway. In an action by a traveler who was injured by an electric shock while riding along a public highway on a dark evening, by coming in contact with a telephone wire of the defendant which for several weeks had been allowed to hang over the road, within so short a distance of the ground that travelers

[17] Kankakee Elec. Co. v. Whittemore, 45 Ill. App. 484 (1892); Larson v. Central Ry. Co., 56 Ill. App. 263 (1894).

[18] Godfrey v. Streator Ry. Co., 56 Ill. App. 378 (1894).

[19] Texarkana Gas Co. v. Orr, 59 Ark. 215 (1894), 27 S. E. Rep. 66.

[20] Jones v. Union Ry. Co., 18 App. Div. (N. Y.) 267.

[21] Western Union Tel. Co. v. Nelson, 82 Md. 293, 31 L. R. A. 572 (1876), 33 Atl. Rep. 763.

[22] City Elec. Co. v. Conery, 61 Ark. 381, 31 L. R. A. 570 (Ark. 1895), 33 S. W. Rep. 426.

[23] Block v. Milwaukee Co., 89 Wis. 371, 27 L. R. A. 365 (1895), 61 N. W. Rep. 1101.

would necessarily come against it, he was permitted to recover from the telephone company, where it was admitted that the wires were highly charged with electricity, owing to a thunder storm then raging. The defendant's negligence was deemed the proximate cause of the injury.[24]

An interesting question has recently been litigated, involving the responsibility of the company which furnishes the electrical fluid, although it has no other connection with the company which uses it and does not own the wires employed. In the case referred to, the plaintiff's intestate was injured by coming in contact with a naked wire, used by an electric street railway, but charged by the defendant company to enable the railway to run its cars. A guy wire had broken loose and, because it was not properly insulated, had caused the decedent's death. It was held that the defendant gas company was liable, for it furnished a fluid which it knew was highly dangerous to life and limb, the supply was wholly under its control, and it was bound to take care commensurate with the danger. The court rightly distinguishes the case of a power company supplying electricity to a railway, from sales of storage batteries charged with electricity, powder or other dangerous substances, where complete control is transferred to the buyer[25]

Thus far we have considered the liability of those whose acts or omissions contribute directly to the injury complained of. The courts have shown an inclination to extend the liability to the municipality itself, which has permitted its streets to become dangerous by the exposure of live wires. The city has been held answerable where it allowed a telephone wire to remain across and near to a sidewalk, to the damage of a pedestrian;[26] and a similar result was reached in the instance of a municipality which failed to use more than ordinary care to inspect overhead wires located in close proximity to electric light wires, and liable to come in contact with pedestrians. The fact that the company operating the wires was also liable was considered insufficient to exonerate the borough.[27] Under a statute rendering the city liable for defects in public highways, the municipality was subjected to damages, where a child ran against a live electric wire, which was hanging over the sidewalk.[28]

The law as developed in the foregoing cases has dealt with the escape of electricity from wires which are broken or not insulated; but the same results have been reached where the escape has occurred from defective appliances other than wires. If the current is sent along the rails of a street railway and the joints are not properly connected, whereby an escape of the electrical fluid follows, the railway company is held responsible to one who suffers injury;[29] as it is, also, in the instance of a passenger on an electric street railway who is shocked by escaping electricity while passing from a forward car to a trailer.[30]

Upon the general subject of liability for accidents in highways from electricity, the courts have shown great unanimity; but upon the exact degree of care to be exercised by those who employ this dangerous agent, they are by no means harmonious. Two divergent views have been adopted by various courts, one of them holding the company which makes use of electricity answerable in any event, whether there is actual negligence or not; the other holding it responsible only for want of reasonable care. One of the earliest decisions upon the subject employs language indicating that the electrical company is virtually an insurer: "The law requires that they should use every way to protect and save the public from loss and injury; they must use every means, regardless of expense, to protect and make safe the public citizens passing over the streets of the city, who are not aware of danger."[31] By another court it was said, the electrical company owed it to the plaintiff "that his lawful use of the street should be substantially as

[24] Southwestern Tel. Co. v. Robinson, 50 Fed. 813, 16 L. R. A. 545 (1892.)

[25] Thomas, Admr. v. Maysville Gas. Co., 53 L. R. A. 147 (Ky. 1900), 21 Ky. Law Rep. 1690.

[26] City of Roodhouse v. Christian, 158 Ill. 137 (1895), 41 N. E. Rep. 748.

[27] Mooney v. Luzerne Borough, 186 Pa. 161, 40 L. R. A. 811 (1898), 40 Atl. Rep. 311.

[28] Graham v. Boston, 156 Mass. 75 (1892), 30 N. E. Rep. 170.

[29] Trenton Passenger Co. v. Bennett, 38 L. R. A. 637 (N. J. 1897), 60 N. J. L. 319, 37 Atl. Rep. 730; Clark v. Nassau Elec. Co., 9 App. Div. 51 (N. Y. 1896).

[30] Burt v. Douglas Co., 83 Wis. 229, 53 N. W. Rep. 447, 18 L. R. A. 479 (Wis. 1892).

[31] Cook v. Wilmington Elec. Co., 9 Houst. (Dela.) 306 (1892), 32 Atl. Rep. 643.

safe as it was before the telegraph and railway plants had so occupied. It was their plain duty not only to properly erect their plants, but to maintain them in such condition as not to endanger the public."[32] In still more positive terms it was declared that "It was a matter of the plainest duty for the defendant to see that the streets and alleys of the city along which, by permission, it was suffered to place its overhead wires for its own private gain, were at all times maintained in the same condition as to safety from the danger of electricity as they were before its overhead use thereof had begun, and a most imperative duty was placed upon the defendant in assuming the overhead use of the public alley, with its wires, to see that persons passing along and using the alley were not injured thereby;"[33] and in a recent discussion of this subject the court state that the electrical company must use "the utmost care," to avoid injuring others.[34]

The great current of decisions, however, is to the effect that only reasonable care is required, according to the varying circumstances of different cases. Thus, in the case of Cook v. Wilmington Elec. Co., above cited,[35] the court, after laying down the rule of liability in the broadest terms, qualify it by saying, "They (the electrical companies) must use due care and ordinary diligence;" and the Court of Appeals of Kentucky, in a decision which uses much stronger expressions, finally imposes a duty "to use the care commensurate with the danger."[36]

The phraseology of the courts in limiting the degree of care required is various. Thus, it is said that the electrical company is under the duty of seeing that its wires are in a "reasonably safe and sound condition;"[37] that it is due to the citizen that electric companies that are permitted to use, for their own purposes, the streets of a city or town, shall be required to exercise the utmost degree of care in the construction, inspection and repair of their wires and poles, to the end that travelers along the highway may not be injured by their appliances. The danger is great and care and watchfulness must be commensurate;"[38] that the companies must use "reasonable care," but this will depend upon the "present state of the science and the present knowledge of the most practical and effectual means and methods of guarding against such perils as are incident to its use;"[39] that the company must employ "every reasonable precaution to protect the public, while using those streets, against injury from electricity;"[40] that those who utilize electricity must use the "highest degree of care and diligence practicable under the circumstances;"[41] that the "law required * * * the highest degree of care which skill and foresight can attain, consistent with the practical conduct of its business under the known methods and the present state of the particular art."[42] The rule and its reason are thus clearly announced by the Supreme Court of Arkansas: "Subjecting the dangerous element of electricity to their control and using it for their own purposes, by means of wires suspended over the streets, it is their duty to maintain it in such a manner as to protect such persons against injury by it, to the extent they can do so by the exercise of reasonable care and diligence. * * * The care varies with the danger which will be incurred by negligence. In cases where the wires carry a strong and dangerous current of electricity, and the result of negligence might be exposure to death or most serious accidents, the highest degree of care is required. This

[32] Western Union Tel. Co. v. Nelson, 82 Md. 293, 31 L. R. A. 572, 33 Atl. 763; Haynes v. Raleigh Gas Co., 114 N. C. 203, 26 L. R. A. 810 (1894), 19 S. E. Rep. 344.

[33] Gannon v. Laclede Gas. Co., 145 Mo. 502, 43 L. R. A. 505 (1898), 46 S. W. Rep. 968, 47 S. W. Rep. 907.

[34] Thomas, Admr., v. Maysville Gas. Co., 53 L.R. A. 147 (Ky. 1900), 21 Ky. Rep. 1690.

[35] Cook v. Wilmington Elec. Co., 9 Houst. (Dela.) 306 (1892), 33 Atl. Rep. 643.

[36] Thomas, Admr., v. Maysville Gas. Co., 53 L. R. A. 147, 148 (Ky. 1900), 21 Ky. Law Rep. 1690. See accord, Huber, v. LaCross City Ry. Co., 31 L. R. A. 583 (Wis. 1897), 92 Wis. 636, 66 N. W. Rep. 708; Larson v. Central Ry. Co., 56 Ill. App. 263 (1894); Godfrey v. Streator Ry. Co., 56 Ill. App. 378 (1894); Haynes v. Raleigh Gas Co., 114 N. C. 203, 26 L. R. A. 810 (1894); 19 S. E. Rep. 344.

[37] Electric Ry. Co. v. Shelton, 49 Tenn. 523 (1890), 14 S. W. Rep. 863.

[38] Haynes v. Raleigh Gas Co., 114 N. C. 203, 26 L. R. A. 810 (1894), 19 S. E. Rep. 344.

[39] Block v. Milwaukee Ry. Co., 89 Wis. 371, 27 L. R. A. 365 (1895), 61 S. W. Rep. 1101.

[40] Suburban Elec. Co. v. Nugent, 32 L. R. A. 700 (N. J. 1896), 58 N. J. Law, 658, 34 Atl. Rep. 1069.

[41] Baltimore City R. Co. v. Nugent, 35 L. R. A. 161 (Md. 1897), 86 Md. 349, 38 Atl. Rep. 779.

[42] Denver Consol. Co. v. Simpson, 31 L. R. A. 566 (Col. 1895), 21 Cal. 371, 41 Pac. Rep. 499.

is especially true of electric railway wires suspended over the streets of populous cities or towns. Here the danger is great, and the care exercised must be commensurate with it. But this duty does not make them insurers against accidents, for they are not responsible for accidents which a reasonable man, in the exercise of the greatest prudence, would not under the circumstance have guarded against."[43]

Whether such reasonable care has been exercised is usually a question for the jury.[44] In one instance, however, an attempt has been made to frame a rigid rule of law, requiring the electrical company to guard its wires from contact with other lines, and holding it negligence *per se* if it does not do so.[45] This has elsewhere been repudiated as a test of negligence, the courts saying, "I find no evidence that such guard wires are either necessary or usual in the construction of single trolley lines for propelling street cars;"[46] and holding that the true test is: "Ought men of ordinary intelligence and prudence engaged in operating the street railway in question to have reasonably expected that the telephone wire in question would be likely to come in contact with its trolley wire at the place in question, and occasion injury to persons lawfully using the highway crossed by said telephone wire?"[47]

While the courts have thus required only the exercise of reasonable care upon the part of the company, they have also held, that it is *prima facie* liable for negligence where the accident was apparently due to the escape of the electric current and injury occurred to a traveler lawfully upon the public highway.[48] The presumption thus raised by an application of the maxim *res ipsa loquitur* is *prima facie* only and may be rebutted by proof that the defendant company was actually in the performance of due care under all the circumstances of the case.[49]

Finally, courts have been called upon to say what will constitute contributory negligence on the part of those who come in contact with live wires in highways. If the contact is involuntary and accidental, no such objection to recovery can arise; and even though it be voluntary, this will not preclude recovery, unless it appear that the party injured knew of the dangerous character of the wire, or might reasonably have inferred the fact from seeing the emission of sparks from it, or the burning of objects which it touched.[50]

It is a matter for congratulation that the American courts have, in this new field of the law, reached clear and sound conclusions with a remarkable degree of uniformity; and that under the decisions, the rights of the public are generously protected without working an injustice to those who deal with the most dangerous, and at the same time the most useful, of the natural forces.

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[43] City Elec. Co. v. Conery, 61 Ark. 381, 33 S. W. Rep. 476, 31 L. R. A. 570 (Ark. 1895).

[44] Boyd v. Portland Co., 37 Oreg. 567; 52 L. R. A. 509 (1900), 62 Pac. Rep. 378.

[45] Electric Co. v. Shelton, 89 Tenn. 423 (1890), 14 S. W. Rep. 863; McKay v. Southern Bell Co., 111 Ala. 337, 19 S. Rep. 695, 31 L. R. A. 589 (Ala. 1896).

[46] City of Albany v. Watervliet Co., 76 Hun. 136 (1894).

[47] Block v. Milwaukee Co., 89 Wis. 371, 27 L. R. A. 365 (1895), 61 N. W. Rep. 1101.

[48] Western Union Tel. Co. v. Nelson, 82 Md. 293, 31 L. R. A. 572 (1896), 33 Atl. Rep. 763; Gannon v. Laclede Gas. Co., 145 Mo. 502, 48 L. R. A. 505 (1898), 46 S. W. Rep. 968, 47 S. W. Rep. 907, Denver Consol. v. Co. Simpson, 31 L. R. A. 565 (Colo. 1893), 21 Cal. 371, 41 Pac. Rep. 499; Clarke v. Nassau Elec. Co., 9 App. Div. 51 (N. Y. 1896); Jones v. Union Ry. Co., 13 App. Div. 267 (N. Y.); Snyder v. Wheeling Elec. Co., 43 W. Va. 661, 28 S. E. Rep. 733, 39 L. R. A. 499 (W. Va. 1897).

[49] Trenton Passenger Co. v. Bennett, 38 L. R. A. 637 (N. J. 1897); 60 N. J. Law, 219, 37 Atl. Rep. 730.

[50] Western Union Tel. Co. v. Thorn, 64 Fed. 287 (1894); Bourget v. Cambridge, 156 Mass. 393, 16 L. R. A., 305 (1892), 31 N. E. Rep. 390; Texarkana Gas Co. v. Orr, 59 Ark. 215 (1894); 27 S. E. Rep. 66; Haynes v. Raleigh Gas Co., 114 N. C. 203, 26 L. R. A. 810 (1894); 19 S. E. Rep. 344.

COPYRIGHT—SERIES OF PHOTOGRAPHS.

EDISON v. LUBIN.

United States Circuit Court, E. D., Pennsylvania, January 13, 1903.

A series of photographs, arranged for use in a machine for producing a panoramic effect, are not entitled to registry and protection by copyright as a "photograph," under Rev. St. § 4952 (U. S. Comp. St. 1901, p. 3406).

DALLAS, C. J.: This case, having been set down for final hearing upon an agreed statement of facts, was, when reached, submitted upon the briefs of counsel, and is now for adjudication.

The question which is presented at the outset is, as I view it, a decisive one, and therefore no other need be considered. That question is: Is

a series of photographs, arranged for use in a machine for producing them in panoramic effect, entitled to registry and protection as a photograph, under section 4952 of the Revised Statutes (U. S. Comp. St. 1901, p. 3406)? That section extended the copyright system to "any * * * photograph," but not to an aggregation of photographs; and I think that, to acquire the monopoly it confers, it is requisite that every photograph, no matter how or for what purpose it may be conjoined with others, shall be separately registered, and that the prescribed notice of copyright shall be inscribed upon each of them. It may be true, as has been argued, that this construction of the section renders it unavailable for the protection of such a series of photographs as this; but if, for this reason, the law is defective, it should be altered by congress, not strained by the courts. I understand that when this act was passed these groups of consecutive photographs were, practically speaking, not in existence; and, in the absence of any expression of the will of congress which can be applied to them, I am not at liberty to conjecture what further provision, if any, would have been made, if their creation had been foreseen.

Even, however, if the section to which attention has thus far been confined would, when separately considered, bear the interpretation which the complainant seeks to have put upon it, the penal section of the same act would inhibit the acceptance of that interpretation. I do not question the correctness of the general proposition that the remedial sections of a statute may be liberally construed, although it contains penal provisions which must be construed strictly. But we are not now concerned with the acts to be done or the steps to be taken to fix or enforce a penalty. Precise adherence to provisions respecting such matters can, of course, be rigidly insisted upon, although as to the others the greatest liberality of construction be indulged; but here the question is as to the thing in legislative contemplation, and, as that thing is designated in exactly the same way in both sections, it cannot be supposed that the one was intended to embrace any subject-matter to which the other could not be applied. It was the manifest purpose of congress to relate the grant of copyright and the liability to forfeiture to precisely the same production,—to make the right and the penalty for its invasion correspondent and correlative; and, therefore, as the words "any photograph," as they occur in the penal section, must be literally applied, they cannot, as they occur in the previous section, be so defined as to bring a series of photographs within their meaning.

The bill of complaint is dismissed, with costs.

NOTE.—*What Matter Is Entitled to Copyright Under the United States Statutes.*—The United States Statutes on the subject of copyright provide that the following subjects are entitled to be copyrighted: books, maps, charts, dramatic or musical compositions, engravings, cuts, prints, photographs or negatives thereof, paintings, drawings, chromos, statues, and models or designs intended to be perfected as a work of the fine arts. U. S. Rev. St. § 4952. It will be our purpose in this annotation to consider what is included within these various terms.

Books.—No subject of copyright is more extensively represented in the archives of the Congressional Library than that of books. What is a book within the meaning of the copyright law? In England, the term book in the statute relating to copyrights has not been held down to the common and ordinary acceptation of that word—a volume written or printed, made up of several sheets and bound together; it may be printed on one sheet, as the words of a song or the music accompanying it. 11 East. 244, note. See also to same effect: Clayton v. Stone, 2 Paine (Fed. Cas. No. 2872), 382; Seoville v. Toland, 6 West. L. J. 84; Littleton v. Ditson Co., 62 Fed. Rep. 597, 67 Fed Rep. 905; Coy Manuel of Trade-Mark Cas., 51, 21 Fed. Cas. 12,553. It has been held that the act protects the manuscript of an author, which includes private letters. Bartlett v. Crittenden, Fed. Cas. No. 1082. It seems also that abstract books and books of indexes containing abstracts of title to lands, with the incumbrances and liens upon said lands, condensed and prepared from public records, may be subjects of copyright. Banker v. Caldwell, 3 Minn. 94. While some of the authorities, already cited, hold that a work to be a book need be printed on only one sheet, yet it has been held that an advertising card devised for the purpose of displaying paints of various colors, consisting of a sheet of paper of various squares, each square having a different color, was not the subject of copyright. Ehret v. Pierce, 10 Fed. Rep. 553. A translation from the original Hebrew, of the Pentateuch, is subject of copyright. Lesser v. Sklarz, Fed. Cas. No. 8276a. But a mere *inchoate* intended publication is not the subject of copyright, as such right extends to the book only, and not to the subject. Centennial Catalogue Co. v. Porter, Fed. Cas. No. 2546. There may, however, be a valid copyright in the plan of a book, as connected with the arrangement and combination of the material and the mode of displaying and illustrating the subject, although all the materials employed and the subject of the work may be common to all other writers. Green v. Bishop, Fed. Cas. No. 5763. So also where there are two compilations from the same original and general source, the later one as well as the earlier one is entitled to be copyrighted. Bullinger v. Mackey, Fed. Cas. No. 2127. The "book" in this case was a compilation of information respecting railroads, express, telegraph, and post offices, known as Bullinger's Guide. So also a compilation from voluminous public documents, so arranged as to show readily the date and order of battles fought during the Civil War, together with a list of casualties, may be copyrighted. Hanson v. Jaccard Jewelry Co., 32 Fed. Rep. 202. A system of indexes, for the purpose of filing letters, is not copyrightable. Amberg Index Co. v. Smith, 82 Fed. Rep. 314. But what is commonly known as an "official form chart" for race purposes has been held entitled to copyright. Egbert v. Greenberg, 100 Fed. Rep. 447. Even if used for betting purposes. Egbert v. Greenberg, 100 Rep. Rep. 447. A curious case arose out of a cheap republication of the ninth edition of the Encyclopedia Brittanica by an enterprising American publisher. It seems that this work was not

copyrighted in the United States and none of its articles save that of Mr. Francis A. Walker on the "United States." This article was copyrighted by Mr. Walker's publishers, by tearing out the pages of the encyclopedia containing said article and forwarding them to the copyright office. The foreign publisher brought suit against the American publisher, more out of a desire, however, to interfere with his destructive competition than to compensate themselves for any damage done them by the reprinting of that one copyrighted article. The court held, however, that there was an infrigement of the copyright, as an "article" published in a larger volume of a series was a book entitled to copyright. Black v. Allen Co., 42 Fed. Rep. 618, 56 Fed. Rep. 764. In the first opinion cited, Judge Shipman holds that a copyright of a single article, bound up in one volume, the bulk of which is *publici juris*, is valid against any unpermitted reprint of the copyrighted book, and that there was "no unfairness or injustice in the complainant's use of the copyright laws for their pecuniary advantage, and as a weapon with which to repel a competition, which is more enterprising than considerate." Blanks for legal instruments have also been held to come within the term "books" in the copyright laws. Brightley v. Littleton, 37 Fed. Rep. 103. Books of credit ratings, also, are entitled to copyright. Ladd v. Oxnard, 75 Fed. Rep. 703. So, also, compilations s elected matter or quotations, which in themselves are *publici juris*, may be copyrightable if the arrangement is original. Beauchemin v. Codieux, Rap. Jud. One. 10 B. R. 255.

Newspapers and Periodicals.—No express provision entitling newspapers or periodicals to copyright are contained in the statutes on that subject. Nevertheless, it is very evident from what we have said under the previous sub-heading that such matter clearly comes within the meaning of the term "book" as used in the act. And it has been so held. Harper v. Shoppell, 26 Fed. Rep. 519. In Clayton v. Stone, 2 Paine (U. S.), 382, Fed. Case, No. 2872, a distinction was drawn between periodicals that contain matter of permanent interest and such as contain the mere *passing* news of the hour. The periodical in this case, which was held not entitled to copyright, was a daily newspaper giving the market reports of the day. The court said: "The object of the act of congress was the promotion of science; and it would be a pretty extraordinary view of the sciences to consider a daily or weekly publication of the state of the market as falling within any class of them. They are of a more fixed, permanent and durable character. The term "science" cannot, with any propriety be applied to a work of so fluctuating and fugitive a form as a newspaper or price-current, the subject-matter of which is daily changing, and is of mere temporary use. The title of the act of congress is for the encouragement of learning and was not intended for the encouragement of mere industry unconnected with learning and the sciences. The preliminary steps required by law, to secure the copyright, cannot reasonably be applied to a work of so ephemeral a character as that of a newspaper. * * * The copyright cannot be secured for any given time for a series of papers published from day to day or week to week; and it is so improbable that any publisher of a newspaper would go through this form for every paper, that it cannot reasonably be presumed that congress intended to include newspapers under the term book. That no such pretense has ever before been set up, either in England or in this country, affords a pretty strong argument that such publications were never considered as falling under the protection of the copyright laws." It is strange, after reading this opinion which has never been overruled to learn that the practice of copyrighting periodicals and even newspapers is nothing novel, and the action of publishers of such publications in copyrighting every number, which the court in the case we have just referred to practically said was impracticable, is of frequent occurrence. We very heartily agree with the court, however, that the copyright office should not be made the center of assistance to commercial and industrial enterprises. The latter have their departments in the scheme of government and they should not be permitted to clog up the Congressional Library with a multitude of books and periodicals devoted to the promotion of trade and commerce and having no relation to, nor in any way assisting in, the promotion of pure science and learning. There can, however, be no general copyright of a daily newspaper which is composed in large part of matter not entitled to protection. Tribune Co. v. Associated Press, 116 Fed. Rep. 126. In this case the Chicago *Tribune* attempted to copyright, under contract, some special telegraphic matter of the London *Times* in its columns by forwarding to the copyright office copies of the issues containing such matter. The court held that this was not such a copyright of the special matter as to give the *Tribune* an exclusive right thereunder. See also: Baker v. Seldon, 101 U. S. 99; Iron Works v. Clow, 82 Fed. Rep. 316.

Musical and Dramatic Compositions.—A dramatic composition to be eligible to copyright must be in the narrative or story form, or must in some way involve the portrayal of character or the depicting of emotion. Fuller v. Bemis, 50 Fed. Rep. 926; Russell v. Smith, 12 Q. B. 217. A mere spectacular piece, full of ballet dances and other tableaux appealing more to the eye than the ear and the understanding, even though containing a little dialogue is not copyrightable. Martinett v. Maguire, (U. S.), 356. Although this case has been severely criticized as withdrawing the protection of the law from playwrights, we are inclined for the reasons given at the close of the preceding sub-heading to concur without reserve in the court's decision in this case. If a tableau of ballet dances can be copyrighted, why cannot a display of fireworks? Such stuff is not science or learning for the promotion of which the act was passed. Therefore, a description of what is known as the "serpentine dance" is not copyrightable. Fuller v. Bemis, 50 Fed. Rep. 926. On the other hand, the court has given playwrights the benefit of every doubt whenever their compositions even bordered on the object for which the copyright act was passed. Thus, in a certain case where the play was a thrilling scene on a railroad track where a certain person was rescued from peril from the very jaws of death, and the dialogue was meager and the scenic display overshadowed everything else, the court held it to be copyrightable. Daly v. Palmer, 6 Blatch. 256; Daly v. Webster, 56 Fed. Rep. 483. A study of these cases, together with that of Serrana v. Jefferson, 33 Fed. Rep. 347. will give an idea of what is to be regarded as a dramatic composition. The case of Serrana v. Jefferson, *supra*, was a mere mechanical contrivance of a flowing river into which a villain falls in the course of the play. This contrivance was held not copyrightable because not an *incident* that constituted a link in the chain of events that constituted the *story*. In Daly v. Webster, *supra*, in summing up the law as to this character

of composition, the court said: "Such a composition, though its success is largely dependent upon what is seen irrespective of the dialogue, is dramatic It tells a story which is quite as intelligible to the spectator as if it had been presented to him in a written narrative. The mere exhibition of mechanical appliances to *represent incidents* is not to be included within this classification. There must be a series of events, dramatically represented, in a certain sequence of order. In other words, there must be a "composition," *i. e.*, a work invented and set in order,—a work of various parts and characters, which, when put upon the stage, is developed by a *series of circumstances.*" It is thus seen that it is the "*incidents*" and "*circumstances*" that go to make up the *story*, and not the scenic attractions and mechanical exhibitions that merely attend the story as accessories, that are entitled to copyright. The reason of this distinction will be evident if we again go back to the purpose of the act,—the encouragement of science and learning.

Musical compositions come within the same rules as other matter. It must be promotive of music as a science. It seems, however, that the courts will not be very critical as to the character of the words or music if either are suitable for the purposes for which they were composed. Henderson v. Tomkins, 60 Fed. Rep. 758. This was one of the popular "topical" songs of the day, had no particular literary or musical merit, but was calculated to "catch the ear" and amuse. It is on this principle that our "coon" songs and rag-time marches attain the dignity of subject matter promotive of science and learning, entitled to the protection of the copyright laws. It may be that by calling the student or scientist from his books or his studio or his laboratory, and doubling him up with a hearty, healthy laugh and relieving his mind from the tension of the more weightier matters in which it is constantly engaged, does much to promote learning and science by reinvigorating the fountain springs from which these most important issues of life flow. The only restriction the courts have placed on such compositions is that they shall be moral, which is a restriction, that applies to all other classes of copyrightable matter. Broder v. Music Co., 88 Fed Rep. 74; Bleestein v. Lithographing Co., 98 Fed. Rep. 608.

Engravings, Cuts and Prints.—The word "print" in the copyright act is defined in the case of Rosebach v. Dryfuss, 2 Fed. Rep. 217, as meaning a "picture, something complete in itself, similar in kind to an engraving, cut or photograph," in which connection it is used. It was held in this case, however, that this word did not include print of balloons and hanging baskets, with printing on them for embroidery and cutting lines, showing how the paper may be cut and joined to make the different parts fit together, and not intended as a mere pictoral representation of something. The merchandise feature of this phase of our subject was eliminated by the amendment of 1874 to Sec. 4962, Rev. Stat., which provides "that in the construction of this act the words engraving, cut and print, shall be applied only to pictorial illustrations, or works connected with the fine arts; and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the patent office." Such laws, if more often indulged by congress, would soon purge the temple, dedicated by our laws to the promotion of science and learning, from the money changers that have so long infested it. Under the amendment which we have just referred to, therefore, limiting the right of copyright to such cuts and prints as are connected with the fine arts, there can be no copyright on cuts contained in a trade catalogue. Mott Iron Works v. Clow, 72 Fed. Rep. 168; Courier Lithographic Co. v. Lithographing Co., 104 Fed. Rep. 993; nor designs for show-bills for circuses, etc. Bleestein v. Lithographing Co., 98 Fed. Rep. 608; nor commercial labels, however ingenious the designs. Higgins v. Keuffel, 140 U. S. 428.

Photographs.—Under the original act, the courts held that a photograph was not an "engraving," "cut," or "print," and therefore not entitled to copyright. Wood v. Abbott, 5 Blatchf. (U. S.) 325. Congress subsequently added the word "photograph," and immediately the law was attacked as unconstitutional for the reason that a photographer was not an author within the meaning of the constitution giving to "authors the exclusive right to their respective writings." There is much reason to be had in support of this contention, but the supreme court has upheld the law. Burrow-Giles Lithographic Co. v. Sarony, 111 U. S. 53. The reason, however, in favor of the constitutionality of such amendment appears when we examine the cases. In the case we have cited by the supreme court, it is held that photographs are entitled to copyright so far as they embody any *original* intellectual conception of the author or photographer. Thus, where a photographer so contrives the pose, costume, and expression of his subject as to produce an original and graceful effect, the picture is entitled to be copyrighted. Falk v. Lithographing Co., 48 Fed. Rep. 678; Falk v. Donaldson, 57 Fed. Rep. 32; Bolles v. Ouling Co., 77 Fed. Rep. 966.

Serial photographs for use in the kinetiscope and other moving picture machines, which is the subject-matter involved in the principal case, would seem to be more the subject of a patent as part of a mechanical device. At any rate, as is suggested by the case of Clayton v. Stone, 2 Paine (U. S.), 382, *supra*, there is no provision in the copyright law of copyrighting a series of things which are entitled each to separate copyrights. If that were possible weekly or monthly numbers of a periodical would be copyrighted by the volume. It does not seem practicable to provide for the copyright of a series as it opens a door for imposing upon the copyright office.

Maps, Charts, and Paintings. — There is no difficulty in understanding the meaning of the above terms. The word "chart" was originally held to include "dress patterns (see Drury v. Ewing, 1 Bond U. S. 540), but it has now been held definitely that the word "chart" does not include dress patterns, nor sheets of paper exhibiting tabulated or methodically arranged information of any character. Taylor v. Gilman, 24 Fed. Rep. 632. The only decision in regard to the word "painting," merely holds that the size of the painting is immaterial on the question of copyright. Schumacher v. Schwenke, 25 Fed. Rep. 466.

Law Reports and Statutes.— A reporter may copyright his arrangement of state reports. Myers v. Callahan, 5 Fed. Rep. 726, 20 Fed. Rep. 441; Banks v. Manchester, 23 Fed. Rep. 143. This does not preclude, however, any one else from publishing the opinions of the court separately or collectively in a manner original to him and not a copy of the original matter or arrangement of a preceding set of reports. State v. Gould, 34 Fed. Rep. 319.

So also a compiler and publisher of an annotated edition of the statutes of a state, may copyright his volumes, and such copyright will cover and protect

such parts of their contents as may fairly be deemed the product of his own labor. Howell v. Miller, 91 Fed. Rep. 129. But no man can secure, neither can a state give a copyright either of its statutes or the decisions of its courts. Davidson v. Wheelock, 27 Fed. Rep. 61; State v. Gould, 34 Fed Rep. 319.

Neither can there be a copyright in any particular arrangement of the matter which the code of a state may require as to the printing of any official blanks. Carlisle v. Colusa County, 57 Fed. Rep. 979.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL—Dissolution of Corporation.—A bill of review, the object of which is to set aside a decree in favor of a corporation, cannot be maintained after the corporation has been dissolved, and has ceased to exist for the purpose of suing or being sued. — Board of Councilmen of City of Frankfort v. Deposit Bank of Frankfort, U. S. C. C., E. D. Ky., 120 Fed. Rep. 165.

2. ACCIDENT INSURANCE — Crossing Railroad Track. — A condition in an accident policy that it does not cover accident resulting while on a railway roadbed does not apply to carefully crossing a railroad track at a recognized thoroughfare. — Payne v. Fraternal Acc. Assn., Iowa, 98 N. W. Rep. 361.

3. ADVERSE POSSESSION — Easement. — The maintenance of steps for the more convenient use of a street held not to amount to an exclusive possession. — Healey v. Kelly, R. I., 54 Atl. Rep. 588.

4. ADVERSE POSSESSION — Evidence of Title.—One adversely in possession of land which has been set apart to her in partition of the estate of an ancestor may prescribe under deed to the ancestor, without there having been a record of the probate order. — McLavy v. Jones, Tex., 72 S. W. Rep. 407.

5. ADVERSE POSSESSION — Notice of Claim. — Where acts done on land give notice of an adverse claim, accompanied by actual possession exclusive in character, limitations run in favor of the adverse possessor from the time occupancy commenced, whether the land be inclosed or not. — Zepeda v. Hoffman, Tex., 72 S. W. Rep. 443.

6. ADVERSE POSSESSION — Void Tax Deed.—As against owner not in possession, tax purchaser having void deed held to have adverse possession of all described land.—Sparks v. Farris, Ark., 71 S. W. Rep. 945.

7. APPEAL AND ERROR — Bill of Exceptions. — If the final judgment of a court from which an error lies is, from a defect appearing on the face, erroneous, the defect may be taken advantage of in a direct bill of exceptions. — Epping v. City of Columbus, Ga., 43 S. E. Rep. 803.

8. APPEAL AND ERROR — Bill of Exceptions. — The rendition of judgment, the motion for a new trial, and the filing of a bill of exception must be shown by the abstract of the record.—Roberts v. Modern Woodmen of America Mo., 71 S. W. Rep. 1075.

9. APPEAL AND ERROR—Variance.—A variance between the pleadings and proof will not require a reversal of the judgment, where it appears that the party complaining was not misled.—Ittner Brick Co. v. Killian, Neb., 98 N. W. Rep. 951.

10. APPEARANCE — Service. — Motion to quash service and strike out the suggestion of damages filed by the plaintiff in ejectment should not be treated as an appearance. — Thomson v. McMorran Milling Co., Mich., 94 N. W. Rep. 188.

11. ATTORNEY AND CLIENT — Reasonableness of Fee.—An attorney's fee of $500 certain, and $1,000 additional in case of success, for the collection of a claim of $19,017.05 by suit, held to be reasonable. — Fox v. Willis, Ky., 72 S. W. Rep. 336.

12. BAIL — Deposit in Lieu of. — If a deposit by a third person is accepted in lieu of bail without authority, and is afterwards restored to him, the state has no such interest therein as to be entitled to compel its return.—State v. Anderson, Iowa., 94 N. W. Rep. 208.

13. BAIL—Validity.—A judgment of forfeiture of recognizance entered against the surety is good, though it does not show that the court had jurisdiction over the principal, nor that the proceedings were dismissed as to him.—State v. Eyermann, Mo., 72 S. W. Rep. 589.

14. BANKRUPTCY—Composition with Creditors.—A lessor of property to a bankrupt held entitled to its possession under the terms of the lease, after a composition with creditors had been made and carried out by the bankrupt, regardless of its rights as against such creditors. — *In re* J. C. Winship Co., U. S. C. C. of App., Seventh Circuit, 120 Fed. Rep. 93.

15. BANKRUPTCY—Discharge.—Judgment creditor held not entitled, under Bankr. Act 1898, § 17, U. S. Comp. St. 1901, p. 3428, to go back of judgment for price of goods to show that sale was induced by purchaser's fraud, so as to avoid discharge in bankruptcy.—Harrington & Goodman v. Herman, Mo., 72 S. W. Rep. 546.

16. BANKRUPTCY — Removal of Property. — The word "removed," as used in Bankr. Act 1898, § 3, ch. 1, U. S. Comp. St. 1901, p. 3422, means an actual or physical change in the position or locality of the property constituting the subject of the removal; and the mere taking possession of the property by a receiver appointed by competent authority is not such a removal. — *In re* Wilmington Hosiery Co., U. S. D. C., D. Dela., 120 Fed. Rep. 180.

17. BILLS AND NOTES — Bona Fides. — A *bona fide* purchaser of a note for value and before maturity takes free from an existing defense of payment. — Jurden v. Ming, Mo., 71 S. W. Rep. 1075.

18. BILLS AND NOTES — Insolvent Bank. — In an action by depositor of check with insolvent bank to recover amount from bank to which the insolvent bank transferred it, evidence held to show that the insolvent bank's transferee took the check in good faith. — Glines v. State Sav. Bank, Mich., 94 N. W. Rep. 195

19. BILLS AND NOTES—Non Est Factum. — Pleas of *non est factum* and no consideration for the notes sued on are not inconsistent. — Storey v. First Nat. Bank, Ky., 72 S. W. Rep. 318.

20. BROKERS — Commissions. — A broker, entitled to commissions only in the event of an actual sale, held not entitled to recover commissions where failure to consummate the sale was due to no fault of his principals.—Owen v. Kuhn, Loeb & Co., Tex., 72 S. W. Rep. 432.

21. BUILDING AND LOAN ASSOCIATIONS — Settlement.—Where a member of a mutual building and loan association adjusted and settled a loan, and made a new loan, such settlement should not be disturbed, in determining the rights of the parties under the new loan. — Callison v. Trenton Building and Loan Assn., Mo., 72 S. W. Rep. 477.

22. BURGLARY — Evidence.—In a prosecution for burglary and larceny, evidence of a justice that defendant pleaded guilty to stealing the property held admissible only to establish defendant's guilt of petty larceny.—Richardson v. State, Miss., 33 So. Rep. 441.

23. CARRIERS — Live Stock. — The fact that a shipment of live stock is delayed, and the property injured and depreciated in value, will not justify the shipper in abandoning the property and charging the carrier as for a conversion. — Spalding v. Chicago, B. & Q. R. Co., Mo., 71 S. W. Rep. 1099.

24. CARRIERS — Refusal to Furnish Cars. — Owner of coal mine may maintain *mandamus* to compel railroad to maintain cars, though they are also refused to other shippers.—Loraine v. Pittsburg, J., E. & E. R. Co., Pa., 54 Atl. Rep. 580.

25. CARRIERS — Wrongful Ejectment.—A passenger on a railroad train is not required to pay fare, when demanded by the conductor, where he has presented a legal ticket, in order to save the company from liability for damages for his wrongful ejection. — Pennsylvania Co. v. Lenhart, U. S. C. C. of App., Seventh Circuit, 120 Fed. Rep. 61.

26. CEMETERIES — Prescription.—Where by the record books of a cemetary a certain person appears as owner of a specified burial lot for 37 years, the implication is that he has paid for it, even though the record books do not show such payment. — McWhirter v. Newell, Ill., 66 N. E. Rep. 345.

27. CHATTEL MORTGAGES — Parol Evidence to Modify. —A second chattel mortgagee has an absolute right to have prior mortgage assigned to him on payment of the amount due on it.—Williams Bros. Co. v. Hanmer, Mich., 94 N. W. Rep. 176.

28. CHATTEL MORTGAGES — Validity of Sale. — Foreclosure of mortgaged personal property without a sale is a satisfaction of the debt to the value of the property taken.—Babcock v. Wells, R. I., 54 Atl. Rep. 599.

29. COMMERCE — Construction of Statute. — It is not within the police powers of a state to subject an article of interstate commerce passing through the state, or temporarily stored therein for distribution in the original packages to purchasers in other states, to exactions in the way of fees for inspection.—Pabst Brewing Co. v. Crenshaw, U. S. C. C., W. D. Mo., 120 Fed. Rep. 144.

30. CONSTITUTIONAL LAW — Attorney's Fees. — The act which makes railroad companies against which damages have been recovered for fire liable for reasonable attorney's fees held not violative of the fourteenth amendment to the federal constitution.—Cleveland, C., C. & St. L. R. Co. v. Hamilton, Ill., 66 N. E. Rep. 389.

31. CONSTITUTIONAL LAW — Hours of Employment.—Pub. Laws, ch. 1004, enacted April 4, 1902, limiting hours of employment of street railway employees, is not unconstitutional as infringing right to contract.—*In re* Ten-Hour Law for Street Ry. Corporations, R. I., 54 Atl. Rep. 602.

32. CONSTITUTIONAL LAW — Interpretation. — Where a word or phrase is used in a constitution in a plain sense, it is to receive the same interpretation when used in any other part, unless it clearly appears from the context that a different meaning should be applied to it.—Epping v. City of Columbus, Ga., 43 S. E. Rep. 803.

33. CONSTITUTIONAL LAW—Selling Liquor to Indians.—Act Jan. 30, 1897, forbidding the sale of liquor to Indians, held unconstitutional, as depriving the Indian of one of the privileges and immunities of citizenship. — Mulligan v. United States, U. S. C. C. of App., Eighth Circuit, 120 Fed. Rep. 98.

34. CONTEMPT — Assault on Officer. — An assault on a United States commissioner because of past discharge of duty is a contempt of the court, whose officer the commissioner is, in the administration of criminal laws. —*Ex parte* McLeod, U. S. D. C., N. D. Ala., 120 Fed. Rep. 130.

35. CONTRACT—Embezzlement. — Contract for the sale of merchandise held not to create the relation of principal and agent, so as to render appropriation of margins an embezzlement. — State v. Brown, Mo., 71 S. W. Rep. 1031.

36. CORPORATIONS—Agreement Between Incorporators. —An agreement between the corporators of a company for compensation for their services held not to preclude further recovery for services rendered by a corporator as manager of the company. — Wiltbank v. Automatic Amusement Mach., N. J., 54 Atl. Rep. 558.

37. CORPORATIONS— Express Trust.—Officers and directors of a corporation held not trustees of an express trust, so as to be precluded from pleading limitations.—Boyd v. Mutual Fire Assn., Wis., 94 N. W. Rep. 171.

38. CORPORATIONS—Usury—A corporation held not entitled to plead usury as to a loan from another corporation holding the majority of its stock before repayment of the loan.—Dittman v. Distilling Co. of America, N. J., 54 Atl. Rep. 570.

39. CORPORATIONS — Venue. — Action against railroad company may be brought in county in which principal officers have their business office.—Boyd v. Blue Ridge Ry. Co., S. Car., 43 S. E. Rep. 817.

40. COVENANTS — Easement.—A covenant by a railroad company to provide a crossing to the owner of a farm held to create an easement, the benefit of which his heir was entitled to, though the word "heirs" was not used.—Speer v. Erie R. Co., N. J., 54 Atl. Rep. 539.

41. CRIMINAL EVIDENCE — Confession.—The fact that the party receiving the confession of defendant was his friend would not make the confession involuntary.—Wilson v. State, Tex., 71 S. W. Rep. 970.

42. CRIMINAL EVIDENCE—Failure to Object — Alleged error in permitting prosecuting attorney to read the testimony taken in the grand jury room cannot be considered on appeal, when it was not excepted to at the time. —Tackaberry v. State, Tex., 72 S. W. Rep. 384.

43. CRIMINAL EVIDENCE.—Flight of Prisoner.—In a criminal prosecution, evidence that defendant failed to appear and forfeited his recognizance was admissible, as tending to show flight.—State v. Blitz, Mo., 71 S. W. Rep. 1027.

44. CRIMINAL EVIDENCE—Good Character—In a criminal prosecution evidence as to good character of accused must be limited to the traits of character involved in the charge.—State v. Anslinger, Mo., 71 S. W. Rep. 1041.

45. CRIMINAL EVIDENCE—Other Offenses.—The state, on cross-examination of defendant, may prove, in order to impeach him, that he has been previously convicted of crime.—McDonald v. State, Tex., 72 S. W. Rep. 383.

46. CRIMINAL EVIDENCE—Threats—Threats by a third party against defendant, on trial for homicide which have not been communicated to him, are inadmissible in evidence.—Webb v. State, Ala., 33 So. Rep. 487.

47. CRIMINAL LAW — Indictment. — Where an indictment contains two counts, but the evidence, the judge's charge and arguments referred to one count only, it will be presumed that the verdict related to such count.—State v. May, N. Car., 43 S. E. Rep. 819.

48. CRIMINAL TRIAL — Applause by Audience. — Applause by some of the audience, at the close of the argument of the prosecuting attorney on a murder trial, promptly rebuked by the trial judge, held not ground for reversal.—State v. Gartrell, Mo., 71 S. W. Rep. 1045.

49. CRIMINAL TRIAL—Consolidation with Felony Trial. —Accused, consenting to consolidation of misdemeanor cases with prosecution for felony, held precluded from afterwards alleging error therein.—Price v. State, Ark., 71 S. W. Rep. 948.

50. CRIMINAL TRIAL—Credibility of Witness.—It is not within the province of the court to classify witnesses and instruct the jury as to the experience of the courts as to a class; but their creditability should be left to the jury.—State v. Tuttle, Ohio, 66 N. E. Rep. 524.

51. CRIMINAL TRIAL— Discussion in Jury Room. — Where jurors discussed the penalty imposed on defend-

ant on a prior trial during their deliberations, and assessed the same punishment, the conviction will be reversed.—Hefner v. State, Tex., 71 S. W. Rep. 964.

52. CRIMINAL TRIAL—Preservation of Error.—Where remarks of the prosecuting attorney were not preserved in the bill of exceptions, and were not set out in the appeal record with proper objections and exception to the same, they cannot be reviewed, though set out in the motion for a new trial.—State v. Woodward, Mo., 71 S. W. Rep. 1015.

53. CRIMINAL TRIAL—Remarks of Prosecuting Attorney.—Remarks of the prosecuting attorney as to defendant having subpoened witnesses, who were in court but not called, held error; there being no evidence of these facts.—State v. Goode, N. Car., 43 S. E. 502.

54. CRIMINAL LAW—Separation of Jury.— The mere separation of jurors in a capital case, without the attendance of an officer held not cause for setting aside a verdict.—Gamble v. State, Fla., 33 So. Rep. 471.

55. DAMAGES—Inadequacy.—A verdict to a husband for injury to his wife will be set aside as inadequate, being considerably less than he has paid, or is bound to pay, for expenses necessitated by the injury.—Caswell v. North Jersey St. Ry Co., N. J., 54 Atl. Rep. 565.

56. DAMAGES—Punitive.—Punitive damages may be recovered against a railroad company for injuries caused by such gross negligence and recklessness as to imply wilfulness.—Boyd v. Blue Ridge Ry. Co., S. Car., 43 S. E. Rep. 817.

57. DAMAGES—Death.—A mother, dependent on her unmarried son for her support, on recovering against his employer for his wrongful death, is entitled to substantial damages.—Bowerman v. Lackawanna Min. Co., Mo., 71 S. W. Rep. 1062.

58. DEED—Delivery.—A deed to a minor, executed by the grantor and delivered to the grantee's elder brother to be delivered to the grantee on his coming of age, which was done, held not void for want of a sufficient delivery.—Marshall v. Hartzfelt, Mo., 71 S. W. Rep. 1061.

59. DEPOSITIONS—Consolidated Suits.—A plaintiff in one of two consolidated suits held a party in interest and so entitled to notice of the taking of depositions by plaintiff in the other suit.—Vaught v. Murray, Ky., 71 S. W. Rep., 924.

60. DISMISSAL AND NONSUIT—Setting Aside Judgment.—A motion to set aside a judgment, not filed within two days after rendition, may be stricken out, where the defendant was present and did not object.—Calvert, W. & B. V. Ry Co. v. Driskill, Tex., 71 S. W. Rep. 997.

61. DIVORCE—Knowledge of Offense.—Where, at the time the husband resumed marital relations with his wife, he had no proof of her infidelity, the resumption of marital relations did not constitute a condonation of her offense, of which he afterwards learned, so as to deprive him of the right to divorce.—Connelly v. Connelly, Mo., 71 S. W. Rep. 1111.

62. DIVORCE—Petitioners's Adultery.—Disclosure in another suit of petitioner's adultery held, under statute, to necessitate further reference of divorce suit to ascertain the truth.—Knott v. Knott, N. J., 54 Atl. Rep. 559.

63. EJECTMENT—Mesne Profits.—In ejectment, there may not be a recovery for mesne profits; the declaration making no claim therefor, as required by Gen. St., p. 1289, §45, and Sup. Ct., rule 85.—Kline v. Williams, N. J., 54 Atl. Rep. 556.

64. EMBEZZLEMENT—Evidence.—One to whom money is given with which to purchase a partnership business held not guilty of embezzlement, though he uses the money for other purposes.—Manuel v. State, Tex., 71 S. W. Rep. 973.

65. EMBEZZLEMENT—Evidence.—Where defendant deposited money he was charged with embezzling in a bank, evidence that he checked out the money so deposited was admissible.—State v. Woodward, Mo., 71 S. W. Rep. 1015.

66. EMINENT DOMAIN—Right of Way.—Damage from accumulation of pond of water held recoverable in action for damages for appropriation of right of way, without pleading imperfect construction of railroad.—Arkansas Cent. R. Co. v. Smith, Ark., 71 S. W. Rep. 947.

67. CORPORATIONS—Evidence.—It must be presumed that the laws of another state as to powers of corporations are similar to those of the state in which a corporation was organized.—Dittman v. Distilling Co. of America, N. J., 54 Atl. Rep. 570.

68. EVIDENCE—Foreign Documents.—Where a certified copy of a grant in foreign language is also a correct translation thereof, it is admissible in evidence.—Hollifield v. Landrum, Tex., 71 S. W. Rep. 979.

69. EVIDENCE—Lost Deed—Where a party has lost the deeds of lands to which he has asserted ownership for 40 years, evidence that deeds of the form and tenor claimed were recorded in another county held admissble, as tending to show that such deeds were in existence at that time.—Logan's Heirs v. Logan, Tex., 72 S. W. Rep 416.

70. EXECUTION—Collection of Judgment.—In an action to enjoin a collection of a judgment and for damages, a verdict in favor of plaintiff, held sufficient.—Deleshaw v. Edelen, Tex., 72 S. W. Rep. 413.

71. EXECUTORS AND ADMINISTRATORS—Attorney's Fees.—Where an administrator has paid attorney's fees, allowed in his account, the account should not be reopened to reduce them, unless they were clearly unreasonable.—Geesey v. Geesey, Md., 54 Atl. Rep. 616.

72. EXECUTORS AND ADMINISTRATORS—Suit to Subject Real Estate—An administrator who fails in a suit to subject property of decedent to his debts is chargeable with costs.—Holburn v. Pfanmiller's Admr., Ky., 71 S. W. Rep 940.

73. EXEMPTIONS—Contract of Employment.—Where a contract for employment contemplates manual labor, the person so employed held a laborer within the statute exempting from garnishment the wages of day laborers.—Stothart v. Melton, Ga., 43 S. E. Rep. 801.

74. FIRE INSURANCE—Proofs of Loss.—The failure of the mortgagor to furnish proofs of loss within the stipulated time, held one of the neglects from the consequence of which the mortgagee is exempted by the standard clause in a fire policy.—Glens Falls Ins. Co. v. Porter, Fla., 33 So. Rep. 473.

75. FIRE INSURANCE—Steam Boilers.—Loss sustained by water escaping from an automatic fire extinguisher, set in motion by steam escaping from an exploded pipe attached to a steam boiler, held within a policy insuring against immediate loss from such explosions.—Hartford Steam Boiler Inspection & Ins. Co. v. Henry Sonneborn & Co., Md., 54 Atl. Rep. 610.

76. FORGERY—Validity of Instrument.—Where, in an indictment for having in possession a forged railroad ticket, the state admitted a fact fatal to a conviction, it was immaterial that the evidence of such fact was conflicting.—State v. Leonard, Mo., 71 S. W. Rep. 1017.

77. FRAUDULENT CONVEYANCES—Father and Son.—Where a conveyance from father to son was adjudged fraudulent as to the father's creditors, the son held properly adjudged a lien for the pecuniary consideration paid.—Chinn v. Curtis, Ky., 71 S. W. Rep. 923.

78. GIFTS—Mental Incapacity.—Where after suit to compel repayment of money transferred by an incompetent, a guardian is appointed, the court should order the money to be paid to him.—Polt v. Polt, Pa., 54 Atl. Rep. 577.

79. HIGHWAYS—Law of the Road.—Under Gen. Laws 1896, ch. 74, § 1, a person injured by collision with a carriage while riding a bicycle on the left side of the road must show an excuse for being there, to attribute negligence to the driver of the carriage.—Pick v. Thurston, R. I., 54 Atl. Rep. 600.

80. HOMICIDE—Degree of Proof.—In a prosecution for homicide, defendant, in order to reduce the killing to manslaughter, or establish a plea of self-defense, is only required to "satisfy the jury" of the existence of the facts, not beyond a reasonable doubt, or by a preponderance of the evidence.—State v. Barrett, N. Car., 43 S. E. Rep. 832.

81. HOMICIDE—Evidence.—Where defendant, deceased, and another had been seen together before the murder, and defendant and such other were together shortly after, held not error to require defendant's son, who was

indicted with defendant, to be brought into court for identification as such other man.—State v. Gartrell, Mo., 71 S. W. Rep. 1045.

82. HUSBAND AND WIFE—Abandonment.—An indictment under Code, § 970, which charges abandonment of defendant's wife, but does not charge failure to support, is fatally defective.—State v. May, N. Car., 43 S. E. Rep. 819.

83. HUSBAND AND WIFE—Wife's Property.—Under Rev. Stat., arts. 624, 635, 2967, a husband cannot lease his wife's separate real estate for a term longer than one year without her signature to the lease.—Dority v. Dority, Tex., 71 S. W. Rep. 950.

84 INDICTMENT AND INFORMATION—Joinder.—An indictment in several counts, alleging several violations of a local option law, held not demurrable on the ground that distinct criminal charges were improperly joined.—State v. Blakeney, Md., 54 Atl. Rep. 614.

85. INTEREST — Building Contract. — Where, under a building contract, the contract price was due on acceptance by the architect, the contractor, if not then paid, is entitled to interest from the time of such acceptance.—Whitehead v. Brothers' Lodge No. 132, I. O. O. F., Ky., 71 S. W. Rep. 933.

86. INTOXICATING LIQUORS — Illegal Sale.—Under the local option law, the sale of intoxicating liquors is the offense, without regard to the purchaser becoming intoxicated.—Terry v State, Tex., 71 S. W. Rep. 968.

87. INTOXICATING LIQUORS—Indictment.—In a trial for violating the local option law, defendant cannot be convicted for any other sale than that alleged in the indictment.—Efird v. State, Tex., 71 S. W. Rep. 957.

88. INTOXICATING LIQUORS—Sale on Prescription.—In a prosecution against a merchant for selling intoxicating liquors, under Rev. Stat., § 8563, the fact that the sales were made on prescription of a physician was immaterial.—State v. Shanks, Mo., 71 S. W. Rep. 1065.

89. JUDGMENT—Conclusiveness of Final Account.—Decree in a proceeding by an administrator to sell lands is not conclusive as to the validity of the debts paid, in a proceeding by administrator to have his final account settled.—Austin v. Austin, N. Car., 43 S. E. Rep. 827.

90. LANDLORD AND TENANT — Implied Obligation to Repair.—There is no obligation at common law that the landlord shall pay the expense of a new roof to replace one destroyed by natural wear and tear.—Thomas v. Conrad, Ky., 71 S. W. Rep. 903.

91. LANDLORD AND TENANT — Unlawful Detainer. — Where, in a landlord's proceeding for possession, his affidavit shows neither ownership nor any right of possession, the court has no jurisdiction.—Cleary v. Waldron, N. J., 54 Atl. Rep. 565.

62. LARCENY — Question of Value. — Where property charged to have been stoled from the person had some value, it was not error to fail to charge on the question of value.—Chitwood v. State, Tex., 71 S. W. Rep. 973.

93. LOTTERIES—Raffle.—Transaction held a raffle, and not the establishing of a lottery, so as to be indictable.—Risien v. State, Tex., 71 S. W. Rep. 974.

94. MANDAMUS — Venue. — Railroad company, having principal office in one county and operating its road wholly within another, may be sued in either county.—Loraine v. Pittsburg, J. E. & E. R. Co., Pa., 54 Atl. Rep. 580.

95. MASTER AND SERVANT — Injury to Employee. — Where mine owners furnished guide to conduct mine employees to work, they did not need to warn employees. —Smith v. Thomas Iron Co.. N. J., 54 Atl. Rep. 562.

96. MASTER AND SERVANT—Joint and Several Liability. —Master and servant held both jointly and severally liable for willful tort or negligence of the servant.—Gardner v. Southern Ry. Co., S. Car., 43 S. E. Rep. 816.

97. MONOPOLIES — Corporation's Powers. — Where a monopoly arose from the exercise of a corporation's express powers to purchase stock in other corporations, the exercise of such powers could not be enjoined,—Dittman v. Distilling Co. of America, N. J., 54 Atl. Rep. 570.

98. MORTGAGES—Bill of Foreclosure.—A bill of foreclosure is not demurrable because the notes and mortgage are not set out in *hæc verba*, or copies attached as exhibits.—Jocelyn v. White, Ill., 66 N. E. Rep. 327.

99. MORTGAGES—Title.—A mortgagee, who forecloses his mortgage and purchases the property at a sale thereunder, is not by such sale vested with the legal title.—Hawkeye Ins. Co. v. Maxwell, Iowa, 94 N. W. Rep. 207.

100. MORTGAGES—Validity of Sale.—The fact that the assignees of a mortgage, in advertising the property for sale, signed the notice, "By Order of the Mortgagees," did not render the notice insufficient.—Babcock v. Wells, R. I., 54 Atl. Rep. 599.

101. MUNICIPAL CORPORATIONS—Alien Labor.—A contract for a street improvement held not invalid, as against property owner, because of alien labor provision and provision regulating hours of work —Wells v Raymond, Ill., 66 N. E Rep. 210.

102. MUNICIPAL CORPORATIONS—Constitution.—There is no constitutional provision that a municipal corporation desiring to incur a debt shall make provision for the payment of the debt until at or before the liability is created.—Epping v. City of Columbus, Ga , 43 S. E Rep. 803.

103. MUNICIPAL CORPORATIONS — Putting Motion. — Where the president of a board of commissioners refuses to put a motion duly made, any member may put it and declare the result.—Hicks v. Long Branch Commission, N J., 54 Atl. Rep. 568.

104. MUNICIPAL CORPORATIONS—Use by Trolley Company.—The question whether the proposed use of a highway by a trolley company is reasonable is for the municipality, and not for the court —Budd v. City of Camden, N. J., 54 Atl. Rep. 569.

105. MUNICIPAL CORPORATIONS—Vacating Street.—Unless a party is entitled to notice of proceedings to vacate a street, he cannot recover for injuries to his means of egress or ingress to the street, caused by vacating part thereof.—Beutel v. West Bay City Sugar Co., Mich., 94 N. W. Rep. 202.

106. NEW TRIAL—Inadequacy of Verdict — A verdict will not be set aside as inadequate merely because a considerably larger sum would not have been declared excessive.— Caswell v. North Jersey St. Ry. Co., N. J., 54 Atl. Rep. 565

107. NEW TRIAL — Single Verdict. — A single verdict against all the defendants in two cases against different defendants, which were tried together, held erroneous. —Seller v. Green, N. J., 54 Atl. Rep. 556.

108. OFFICERS—School Trustees. — Where school trustees require the contractor for a schoolhouse to give a bond, under Comp. Laws, §§ 10,743-10,745, they are not individually liable to one furnishing materials to such contractors, though the sureties have no property in the state.—Huebner v. Nims, Mich., 94 N. W. Rep. 180.

109. PARLIAMENTARY LAW — Putting Motion. — On a *viva voce* vote in a legislative body, the whole body is counted as the chair announces.—Hicks v. Long Branch Commission, N. J., 54 Atl. Rep. 568.

110. PARTNERSHIP — Change of Firm. — A mortgage given to firm held not enforceable by succeeding firm, in absence of any new contract. — Forst v. Kirkpatrick, N. J., 54 Atl. Rep. 554.

111. PARTNERSHIP—Ownership in Severalty.—Partners can, at any time before the firm's creditors acquire a lien thereon, sever their joint interests in the partnership property, and may thereafter claim it as exempt to them, respectively, as heads of families. — Lee v. Bradley Fertilizer Co., Fla., 33 So. Rep. 456.

112. PAYMENT—Dissolution of Firm.—Where, after the dissolution of a firm, an account with it is carried on as a running account with the succeeding firm, payments made to the succeeding firm, unless appropriated, go to discharge oldest items of account.—Forst v. Kirkpatrick, N. J., 54 Atl. Rep. 554.

113. PLEADING — Petition. — If a petition fails to state facts sufficient to constitute a cause of action, the objec-

tion may be made after the trial, though no demurrer was interposed. — Welch v. Mastin, Mo., 71 S. W. Rep. 1090.

114. PROCESS — Service. — In serving a citation and original petition, it is not necessary to serve therewith an amended petition, alleging that a defendant has moved to another county and asking for citation to such county. — Calvert, W. & B. V. Ry. Co. v. Driskill, Tex., 71 S. W. Rep. 997.

115. PROHIBITION — Jurisdiction. — A writ of prohibition to the court of appeals held not to lie after it had affirmed the judgment, sent its mandate to the trial court, and adjourned the term.—Klingelhoefer v. Smith, Mo., 71 S. W. Rep. 1008.

116. PROPERTY—Water Pipes.—Water pipes and meter, laid in the streets by the owner of a town site, held to be personal property, and transferable by bill of sale.—Mulrooney v. Obear, Mo., 71 S. W. Rep. 1019.

117. QUIETING TITLE — Removing Cloud. — A sheriff's deed, executed pursuant to a sale of land under execution issued on a void justice's judgment, constitutes a cloud, which the land owner is entitled to have removed. —Purdy v. Law, Mich., 94 N. W. Rep. 182.

118. RAILROADS—Farm Crossing.—Where a farm crossing was located and constructed across a railroad by agreement, its location could not be changed afterwards by one party without the consent of the other. — Speer v. Erie R. Co., N. J., 54 Atl. Rep 539.

119. RAILROADS — Fires.—It is a legitimate conclusion that a loaded freight train laboring up a grade will throw out sparks. — Brooks v. Missouri Pac. Ry. Co., Mo., 71 S. W Rep. 1083.

120. RAILROADS — Negligence. — Though plaintiff was negligent in having its train across defendant's track, the negligence of defendant's crew in not seeing it and avoiding the accident is the proximate cause. — Missouri Pac. Ry. Co. v. Chicago G. W. Ry. Co., Mo., 71 S. W. Rep. 1081.

121. REMOVAL OF CAUSES—Objection to Jurisdiction.—A defendant, by removing a cause brought in a court of a state of which neither party is a resident, waives the right to object to the jurisdiction of the federal court over him; and plaintiff also waives the right to object to the court's jurisdiction, where, after the removal, he consents to the entry of orders affecting matters in controversy. — Foulk v. Gray, U. S. C. C., S. D. W. Va., 120 Fed. Rep. 156.

122. REPLEVIN — Liability of Surety. — The surety on a claim and delivery bond held not entitled to have the penalty of the bond reduced because the property had been returned. — Hendley v. McIntyre, N. Car., 48 S. E. Rep. 824.

123. SALES — Construction of Contract. — Whether a contract by which one party agrees to send to the other goods to be sold by him constitutes a bailment or a conditional sale depends on whether the sender has the right to compel a return of the thing sent, or whether the receiver has the option to pay for the same in money. — *In re* Galt, U. S. C. C. of App., Seventh Circuit, 120 Fed. Rep. 64.

124. SALES — Insolvency.—In order to avoid fraud, it is not incumbent on the buyer of goods to inform the seller of his insolvency; no inquiry being made as to his financial condition.—Stein v. Hill, Mo., 71 S. W. Rep. 1107.

125. SPECIFIC PERFOMANCE — Equity Jurisdiction. — Where, in a suit for specific performance, all of the defendants are personally served and defend, the jurisdiction of equity is not ousted by the fact that the land lies in a sister state.—Barringer v. Ryder, Iowa, 93 N. W. Rep. 56.

126. STREET RAILROADS— Look and Listen.—Ordinary care to discover an approaching street car by looking or listening is all that is required of a driver —Stanley v. Cedar Rapids & M. C. Ry. Co., Iowa, 93 N. W. Rep. 489.

127. STREET RAILROADS — Negligence. — Contributory negligence of one crossing a street railway tract held not excused by negligence of railroad. — State v. United Rys. & Electric Co., Md., 54 Atl. Rep. 612.

128. STREET RAILROADS—Special Damage. — Owner of property abutting on street held not entitled to complain because electric road would be constructed on part of street not designated by the company's charter. — Baker v. Selma St. & S. Ry. Co., Ala., 33 So. Rep 685.

129. TAXATION— Assessment. —The board of equalization should not deny relief to one whose property has been assessed too high, on the ground that to lower his assessment would reduce the aggregate assessment.—Sarpy County v. Clarke, Neb., 93 N. W. Rep. 416.

130. TAXATION — Back Assessment.—In the absence of any other authority than Rev. St. 1899, §9199, there cannot be an assessment for a previous year where merely personal property of an individual was omitted from assessment.—City of Hannibal v. Bowman, Mo., 71 S. W. Rep. 1122.

131. TAXATION—Delinquent Taxes.— Where the county board has purchased real estate for delinquent taxes, it cannot cancel the sale without the full payment of taxes, penalties, interest, and costs. — Kelly v. Dawes County, Neb., 93 N. W. Rep. 405.

132. TAXATION—Double Tax—To assess the shares of the stock of a bank in the hands of the holders at its full value, and also to assess and tax the real estate of the bank, is not unconstitutional as double taxation —Illinois Nat. Bank v. Kinsella, Ill., 66 N. E. Rep. 338.

133. TAXATION — Property Omitted.—Employment by county supervisors of one to discover property omitted from taxation held not illegal, because all taxes collected thereby do not inure to benefit of county. — Disbrow v. Board of Sup'rs of Cass County, Iowa, 93 N. W. Rep. 585.

134. TELEGRAPHS AND TELEPHONES—Construction of Statute.—Code 1873, § 1324, as amended by laws 19th Gen. Assem. ch. 104, construed in the light of Code 1873, § 466, and Laws 22d Gen. Assem. ch. 1, 16, and held to authorize occupation of city's streets by telephone company without city's consent, notwithstanding Code 1851, § 26, par. 5.—Chamberlain v. Iowa Tel. Co., Iowa, 93 N. W. Rep. 596.

135. TENANCY IN COMMON — Fraud.—Where one joint owner of property sold the same and turned over to the other less than he received, the latter could recover, though he received as much as his share was really worth.—Walker v. Evans, Mo., 71 S. W. Rep. 1086.

136. TENDER — Worn Nickel.—Street car conductor held not entitled to eject passenger for refusal to pay fare in other than worn coin.—Ruth v. St. Louis Transit Co., Mo., 71 S. W. Rep. 1055.

137. TORTS—Pleading.—An allegation of conspiracy in an action for tort held matter of inducement, and, though not proved, not to prevent recovery of defendants, shown to have participated in the tort.—Young v. Gormley, Iowa, 93 N. W. Rep. 565.

138. TRADE-MARKS AND TRADE-NAMES —Identity of Names.—A person engaging in the same business as another previously doing business under the same name may not dress his goods in a manner calculated to increase the confusion and enable his goods to be sold as those of his competitor.—Chickering v. Chickering & Sons, U. S. C. C. of App., Seventh Circuit, 120 Fed. Rep. 69.

139. TRIAL—Evidence.—A party waives an objection to evidence by introducing the same character of evidence himself.—Ruth v. St. Louis Transit Co., Mo., 71 S. W. Rep. 1055.

140. TRIAL—Juror—Withdrawal of a juror by direction of the court produces a mistrial, so that, there not having been any trial, a new trial cannot be directed.—Rosengarten v. Central R. Co., N. J., 54 Atl. Rep. 564.

141. TRIAL—Juror's Conversation with Plaintiff.—Refusal to discharge jury because of a conversation during trial between a juror and one of the plaintiffs held not error.—Vowell v. Issaquah Coal Co., Wash., 71 Pac. Rep. 725.

142. TRIAL— Separate Trial. — One of several defendants in action to revive judgment held not entitled to a separate trial as a matter of right.—Haupt v. Simington, Mont., 71 Pac. Rep. 672.

143. TRUSTS—Death of Trustee. — Where a permanent trust is created and a trustee named, the trust will not lapse on the death of such trustee, but the court will appoint succeeding trustees — *In re* Gay's Estate, Cal., 71 Pac. Rep. 707.

144. TRUSTS—Execution Sale.—Purchase by tenant of his cotenant's interest on execution sale under agreement held not to show a constructive trust.—Stafford v. Stafford, Tex., 71 S. W. Rep. 984.

145. TRUSTS—Possession.—A *cestui que* trust, entitled to possession of real estate, may, without the trustees, sue to enjoin interference with its right.—Cape v. Plymouth Congregational Church, Wis., 93 N. W. Rep. 449.

146. TRUSTS—Quitclaim Grantee.—A grantee under a quitclaim, given to secure a debt, held to hold the property as trustee.—Babcock v. Wells, R. I., 54 Atl. Rep. 596.

147. UNITED STATES—Waiver of Exemption.— Where the United States sues, it waives its exemption so far as to allow a presentation by defendant of set-off to the extent of the demand made. — United States v. Warren, Okla., 71 Pac. Rep. 685.

148. VENDOR AND PURCHASER—Defective Title. — One who has agreed to purchase land if the abstract shows perfect title is not required to point out specific objections in a defective abstract.—Lessenich v. Sellers, Iowa, 93 N. W. Rep. 848.

149. VENDOR AND PURCHASER—Inability to Give Good Title.—A vendor being unable to give a good title as contracted at the time stipulated, the purchaser need not wait, but, without formal offer of performance, may recover payments made.—Burke v. Schrieber, Mass., 66 N. E. Rep. 411.

150. VENDOR AND PURCHASER.—Insolvency of Buyer.—Belief of one, agreeing to give title to certain land, that he had a right thereto, held to render binding on the vendee his contract to purchase the land, though at the time of the contract, the belief was ill-founded.—Hollifield v. Landrum, Tex., 71 S. W. Rep. 1107.

151 VENDOR AND PURCHASER — Option to Re-Purchase.—In an action by the grantee by quitclaim from a lessor, with knowledge of the option of purchase in the lease, against the lessee, to recover on the ground of a wronful holding over, held that, by reason of what defendant had done under the option, he was entitled to judgment.—Sizer v. Clark, Wis , 93 N. W. Rep. 539.

152. WAREHOUSEMEN — Cold Storage. — In an action against the owner of a cold storage warehouse in which plaintiff had stored celery for damages resulting from the failure to keep the storage room at a uniform and proper temperature, plaintiff's failure to remove the celery after learning that the temperature was not proper held not to render him guilty of contributory negligence as a matter of law. — Rettner v. Minnesota Cold Storage Co., Minn., 93 N. W. Rep. 120.

153 WATERS AND WATER COURSES— Overflow.—In an action for damages from overflow of plaintiff's land, caused by defendant, it is not necessary to a recovery that the particular damages caused should be within the anticipation of reasonably intelligent and prudent persons.—Schmeckpepper v. Chicago & N. W. Ry. Co., Wis., 93 N. W. Rep. 538.

154. WATERS AND WATER COURSES — Pleading. — Where a complaint admits defendant's right to discharge water on plaintiff's land, but merely seeks to regulate the right, the answer need not set up the right relied on.—Durning v. Walz, Oreg., 71 Pac. Rep. 692.

155. WILLS — Ademption of Legacy. — Exchange of stock in bank, on its consolidation with other banks, for stock in consolidated bank, held not an ademption of legacy of such stock.—*In re* Peirce, R. I., 54 Atl. Rep. 588.

156. WILLS — Conditions in Restraint of Marriage.— All conditions annexed to gifts or devises generally prohibiting marriage, or where there is an attempt to fetter or restrain marriage by unreasonable conditions, are inoperative and void as being against public policy; and not only conditions actually prohibiting, but also any such as lead to probable restraint of marriage, are void.—Kennedy v. Alexander, D. C. App., 31 Wash. Law Rep. 158.

157. WILLS—Construction.—Under a will giving testatrix's son the right to live on her farm, held, that the son, if living on the farm, should pay taxes, repairs and expenses.—*In re* Martin, R. I., 54 Atl. Rep. 589.

158. WILLS—Construction. — A legatee of table linen of small value held, under the facts, not entitled to take under a clause directing the distribution of testatrix's residuary estate among the legatees.—Kenan v. Graham, Ala., 33 So. Rep. 699.

159. WILLS—Legal Representative. — A husband held not a legal representative of his wife, so as to take an interest in her real estate, she dying testate.—*In re* Lesieur's Estate, Pa., 54 Atl. Rep. 579.

160. WILLS.—Setting Aside.—A will will not be set aside because testator was a believer in spiritualism.—Buchanan v. Pierie, Pa., 54 Atl. Rep. 588.

161. WILLS—Testamentary Capacity—Prejudice against testator's son, not amounting to an insane delusion, held not sufficient to invalidate a will bequeathing to such son one-fourth of the remainder of testator's estate and the balance to another son.—Schmidt v. Schmidt, Ill., 66 N. E. Rep. 371.

162. WILLS—Validity of "Rough" Draft of Proposed Will. — When an unsign and unattested paper was propounded for probate as a will of personal property, held that the jury were properly instructed that if they found from the evidence that the paper was written by deceased as a draft of a will from which she intended to have a more formal will prepared and executed, their verdict should be for the caveators unless they should further find that deceased was prevented by sudden sickness or death from carrying this intention into effect —Cruit v. Owen, D. C. App., 31 Wash. Law Rep. 222.

163. WITNESSES — Attack on Character. — Where accused has taken the stand, a question on cross-examination as to whether he had ever been in the petitentiary, held not inadmissible, as the question simply went to his character as a witness. — State v. McCoy, La., 33 So. Rep. 730.

164. WITNESSES—Competency.—Certain testimony held incompetent, under Evidence Act, § 4, P. L. 1900, p. 363, rendering illegal testimony as to transactions with a testator, save under certain conditions. — Baker v. Bancroft, N. J., 54 Atl. Rep. 563.

165. WITNESSES—Husband and Wife.—Under the expressed provision of 2 Starr & C. Ann. St. (2d Ed.), p. 1837, a husband may testify in behalf of the wife, where the litigation concerns her separate property—Cassem v. Heustis, Ill., 66 N. E. Rep. 283.

166. WITNESSES — Husband of Administratrix.—Where a married woman is sued as administratrix, her husband is a competent witness.—Gordon v. Sullivan, Wis., 93 N. W. Rep. 457.

167. WITNESSES—Impeaching Testimony.—Statements of accused, taken under oath, contrary to Code, § 1145, cannot be referred to by solicitor on trial to impeach his testimony.—State v. Parker, N. Car., 43 S. E. Rep. 880

168. WITNESSES — Memorandum. — In order to use a memorandum to refresh a witness, he should produce the original or satisfactorily account for its absence,—Volusia County Bank v. Bigelow, Fla., 33 So. Rep. 704.

169. WITNESSES — Wife in Divorce Suit. — A wife is not competent to testify in an action brought by her for divorce on the ground of separation for five years. — Boreing v. Boreing, Ky., 71 S. W. Rep. 481.

170. WORK AND LABOR—Family Relation.—In an action for work and labor, the defense that the work was performed as a member of defendant's family is unavailable unless pleaded. — Schroeder v. Schroeder, Iowa, 93 N. W. Rep. 78.

INDEX-DIGEST

TO THE EDITORIALS, NOTES OF RECENT DECISIONS, LEADING ARTICLES, ANNOTATED CASES, LEGAL NEWS, CORRESPONDENCE AND BOOK REVIEWS IN VOLUME 56.

A separate subject-index for the "Digest of Current Opinions" will be found on page 508, following this Index-Digest.

SUBJECT-INDEX

TO ALL THE "DIGESTS OF CURRENT OPINIONS" IN VOL. 56.

This subject-index contains a reference *under its appropriate head* to every digest of current opinions which has appeared in the volume. The references, of course, are to the pages upon which the digest may be found. There are no cross-references, but each digest is indexed herein under that head, for which it would most naturally occur to a searcher to look. It will be understood that the page to which reference, by number, is made, may contain more than one case on the subject under examination, and therefore the entire page in each instance will necessarily have to be scanned in order to make effective and thorough search.